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ABSTRACT

This is volume I of a two-volume study of the constitutionality of the K-12 funding system in Illinois. In this volume, seven steps are presented in the issues and outcomes of the major judicial challenges to systems of state aid to public schools. The first chapter looks at the history of state aid litigation up to the time California became the first state to experience a successful challenge to a state's system of aid to public schools. The second and third chapters analyze the California experience and what occurred between "Serrano vs. Priest" and "Rodriguez vs. San Antonio Independent School District." In the fourth chapter, the only decision on this issue that has ever been issued by the U.S. Supreme Court is considered. Chapters 5 and 6 review state court decisions on this issue, with chapter 5 looking at the litigation that upheld state aid systems and chapter 6 concentrating on those cases that overturned such systems. Chapter 7 considers the constitutional and statutory background related to the Illinois system of financing public schools and considers judicial actions originating in Illinois that have, in varying degrees, challenged some aspect of the Illinois system. This chapter also identifies fundamental questions, issues, and facts that tend to support or call into question the constitutionality of the present Illinois system. Case citations and references are included. (TE)

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MacArthur/Spencer Series Number 3

THE CONSTITUTIONALITY OF THE K-12 FUNDING SYSTEM IN ILLINOIS

Volume I: Legal Issues

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May 1987

This series of monographs is dedicated to Professor Lucy Jen Huang Hickrod, late of the Sociology Department of Illinois State University. Illness has forever taken Professor Huang Hickrod from intellectual labors, but she remains an inspiration to her husband, her family and her many friends. Sic transit Gloria Mundi.

Copr. David L. Franklin, 1987

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INTRODUCTION

State aid to local school districts is typically viewed as a system whereby state allocation of financial resources, when added to the revenue raised to support local school districts from local sources of taxation, "ought" to be sufficient to finance an educational program for all students in every public school district within a state. This combination of state aid plus locally generated funds is the most commonly found school finance system in the various states and has been employed for several decades. This much is clear. What is not so clear, however, is the issue of what this financing system is to achieve. Is it to guarantee a predetermined "minimum" educational program? Is it to provide "equity" with respect to the educational "needs" between the separate school districts within a state? Is it to guarantee a "thorough and efficient" system of public schools throughout a state? Or, as is popularly discussed in the 1980s, is it to insure "excellence" in all the public schools within a state? Functionally, what these school finance systems among the states "ought" to achieve has been hotly debated for decades in educational circles and in the political arena. The issue is far from settled, although a trend in the last 20 years has been to present the issue to courts of law for a decision. As this trend has developed, a "marriage" of school finance and litigation has evolved. It is this marriage that is the focus of the first section of this monograph.

In Volume I of this two volume study, the authors present seven steps in the issues and outcomes of the major judicial challenges to systems of state aid to public schools. The first chapter looks at the history of state aid litigation up to the time California became the first state to experience a successful challenge to a state's system of aid to public schools. The second and third chapters analyze the California experience and what occurred between Serrano I and Rodriguez. In the fourth chapter, the only decision on this issue which has ever been issued by the United States Supreme Court is considered. Chapters five and six review state court decisions on this issue with chapter five looking at the litigation which upheld state aid systems and six concentrating on those cases which overturned such systems. Chapter seven considers the constitutional and statutory background related to the Illinois system of financing public schools and considers judicial actions originating in Illinois which have, in varying degrees, challenged some aspect of the Illinois system.

The final and perhaps the most hazardous step is to apply all of the foregoing to the present system of state aid to public schools in Illinois and to identify, based on all previous steps, the characteristics which the Illinois system has in common with the previously upheld and overturned systems. An integral component of this last chapter will be to identify the fundamental questions, issues and facts which tend to support the constitutionality of the present Illinois system, along with those which tend to indicate that the present system might not withstand constitutional scrutiny.

Volume II of this study will present the fiscal evidence related to the constitutionality of the Illinois state aid to public schools system. Such a "fiscal facts" are essential for all who would challenge or defend the constitutionality of the Illinois system and should, therefore, be considered in tandem with the data contained in Volume I.

CHAPTER I

PRE-SERRANO I: EARLY SKIRMISHES IN THE COURTS

Attempting to seek judicial redress for alleged inequities in state aid systems for public education has a long and checkered history in the United States. As early as 1912, the Supreme Judicial Court of Maine was called upon to resolve the first direct state aid dispute which challenged, in part, the constitutionality of Maine's school finance system under the Maine Constitution and the Fourteenth Amendment of the Constitution of the United States.[1] The legislatively enacted state aid system involved in this case had several components. A "Permanent School Fund" was established in 1872 and was financed by a combination of revenue generating sources including the proceeds derived from the sale of "wild lands" by the state, a state tax on savings banks and trust companies, and a "school mill tax" derived from assessing all the property in the state situated in cities, towns, plantations and organized townships. This school mill fund was distributed by the State Treasurer (Gilmore) to cities, towns and plantations "according to the number of scholars therein." An additional source of revenue was created by the Maine Legislature in 1909 by further imposing a state tax on the same property as the school mill tax, which was also distributed in a like manner by the State Treasurer, and this was known as the "Common School Fund." The formula governing the distribution of the common school fund was "one-third according to the number of scholars therein and two-thirds according to the valuation."[2]

The first objection raised against this system was that this statute imposed an unequal burden of taxation on the unorganized townships of the state because, while the school mill fund was created by taxation of all the property in the cities, plantations and organized townships, no provision was made for the distribution of any part of the fund to unorganized townships; they were simply omitted. In other words, while four subdivisions of the state were required to contribute to the school mill fund, only three received financial benefits from the fund.

According to the Maine court, this objection was "without legal foundation" since:

> The Legislature has the right under the Constitution to impose an equal rate of taxation upon all the property in the state, including the property in unorganized townships, for the purpose of distributing the proceeds thereof among the cities, towns and plantations for common school purposes, and the mere fact that the tax is assessed upon the property in four municipal subdivisions and distributed among three is not in itself fatal. . . . Ample ground for the exercise of this legislative power [is] found in the constitutional provision that "a general diffusion of the advantages of education are essential to the preservation of the rights and liberties of the people" (Article 8), and in the "full power" conferred upon the Legislature "to make and establish all reasonable laws and regulations for the defense and benefit of the people of this state" (Article 4, pt.3, Sec.I). The existence of the power being granted, of the necessity of its exercise the Legislature must be and is the sole judge. . . . All the property in the state is assessed according to its valuation. All contribute thereto in proportion to their means. It is a tax for a public purpose, not one by which one individual is taxed for the special and peculiar

benefit of another. All enjoy the beneficial results of education, and the better order and government arising therefrom, irrespective of the amounts respectively contributed by each to these most important objectives.[3]

As viewed by the court, "The fundamental question in this is: Is the purpose for which the tax assessed a public purpose; not whether any portion of it may find its way back again to the pocket of the taxpayer or to the direct advantage of himself or family."[4] Following this reasoning the court concluded, since education benefits all, that for taxation to be equal and uniform in the constitutional sense, it is not necessary that the benefits arising from the tax should be enjoyed by all the people in equal degree, nor that each person should participate in each particular benefit such as education. Furthermore, the Maine Legislature had made alternative provisions for children residing in unorganized townships, which included using state appropriations to pay for the educational costs incurred by their attending schools in adjoining towns, plantations and organized townships. Thus, this claim of legal and constitutional inequality raised by Sawyer was rejected.

Sawyer also attacked the method of distribution of the common school funds as unconstitutional because it was made, not according to the number of students as was the school mill fund, but one-third according to the number of students and two-thirds according to valuation. This, Sawyer claimed, resulted in "benefiting the cities, and richer towns more than the poorer" which resulted in inequality. The court also rejected this constitutional inequality argument by stating that the results of this one-third/two-thirds system was not the test of its constitutionality. While the court recognized that inequality of tax assessments would lack constitutionality, it found that inequality in the distribution of tax revenue is not unconstitutional provided the purpose behind the distribution was to promote the public welfare. As described by the court:

> The fundamental question is this: Is the purpose for which the tax is assessed a public purpose, not whether any portion of it may find its way back again to the pocket of the taxpayer or to the direct advantage of himself or family. Were the latter the text, the childless man would be exempt from the support of schools and the sane and well from the support of hospitals. In order that taxation may be equal and uniform in the constitutional sense, it is not necessary that the benefits arising therefrom should be enjoyed by all the people in equal degree, nor that each one of the people should participate in each particular benefit. Laws must be general in their character, and the benefits must affect different people differently. This is due to difference in situation.
>
> In this view of the situation, it is evident that the passage of the common school fund act of 1909 in fact works neither inequality nor injustice so far as the education of children in the unorganized townships is concerned, and, when the Legislature doubled the amount of the school tax which the land of the plaintiff [Sawyer] was to pay, it at the same time more than doubled the proportional part of the state fund which could be used for the education of his children. So much for the first contention as to inequality between taxes paid and benefits received.
>
> But the plaintiff further attacks the method of distribution as unconstitutional because it is made, not according to the number of scholars, as is the school mill fund, but one-third according to the number of scholars and two-thirds according to valuation, thus benefiting the cities, and richer towns more than poorer.

> But that result is not the test of constitutionality. Inequality of assessments is necessarily fatal, inequality of distribution is not, provided the purpose be the public welfare. The method of distributing the proceeds of such a tax rests in the wise discretion and sound judgment of the Legislature. If this discretion is unwisely exercised, the remedy is with the people, and not with the court. Such distribution might be according to population, or according to valuation, or partly on one basis and partly on another. The Constitution prescribes no regulation in regard to this matter, and it is not for the court to say that one method should be adopted in preference to another. We are not to substitute our judgment for that of a co-ordinate branch of the government working within its constitutional limits. The distribution of the school mill fund of 1872 has resulted in inequality. That distribution has been, and continues to be, based on the number of scholars, thereby benefiting the poorer towns more than the richer, because they receive more than they pay, and that method is deemed constitutional. The act under consideration apportions the newly created common school fund one-third according to the number of scholars and two-thirds according to the valuations as fixed by the state assessors, thereby benefiting the richer towns more than the poorer, producing inequality in the other direction, but we are unable to see why this method is not equally constitutional with the other. Both taxes are assessed for the same admittedly public purpose, both promote the common welfare, and the fact that the Legislature has seen fit to distribute the two on different bases is not fatal to the validity of either. It may be that the two methods taken together produce a more equal distribution than either operating alone. In any event, the Legislature has adopted both methods, and both must stand or fall together.[5]

The challenges brought by Sawyer under the Constitution of Maine were basically grounded in that documents language which, in Article 8, stated:

> A general diffusion of the advantages of education being essential to the preservation of the rights and liberties of the people, to promote this important object, the Legislature are authorized and it shall be their duty to require the several towns to make provision, at their own expense, for the support and maintenance of the public schools. . . .[6]

In applying Sawyer's claims against this language the court determined that the powers vested in the Maine Legislature were, generally speaking, absolute when not restricted by the Constitution itself. Since no restrictions on the powers of the Legislative were contained in the Constitution regarding the maintenance of funding of the common schools of Maine, the legislative enactments concerning the school mill fund and the common school fund were not unconstitutional acts. While the Constitution did place a "duty" on the Legislature to make "suitable provisions" for public schools, the extent of this duty was "left wholly to the discretion of the Legislature." As stated by the court:

> The phraseology of Article 8 is in itself significant. In the first place only a "duty" is laid upon the Legislature. The Constitution does not even say that they shall require, but that they are "authorized," and it is "their duty to require" the several towns to provide for the support of common schools.

> And in the second place, the extent of the requirement is left wholly to the discretion of the Legislature, because their duty is to require the several towns to make "suitable" provisions. Who is to determine what is suitable? Clearly the Legislature itself. "Suitable" is an elastic and varying term, dependent upon the necessities of changing times. What the Legislature might deem to be suitable, and therefore necessary under some conditions, they might deem unnecessary under others. The amount which the towns ought to raise would depend largely upon the amounts available to them from other sources, and as these other sources increase the local sources can properly diminish.
>
> Most significant, too, in this connection, is the fact that the first act passed by the Legislature in furtherance of the constitutional injuction fixed the principal as "a sum of money, including the income of any incorporated school fund, not less than forty cents for each inhabitant." (Statute 1821, c. 117, Section 1.) Under that act, whatever was received from the income of any incorporated school fund was in effect "deemed to be raised" under that statute, and reduced the amount required to be raised locally, and, if such income were sufficient in any town to equal the per capita tax of 40 cents, then the requirement for local taxation in that town ceased entirely. In this most important particular the acts of 1821 and 1909 are identical.
>
> In the light, therefore, of these decisions, and in view of the language of the Constitution and of the first legislative act passed in accordance therewith, we have no hesitation in saying that, although the act of 1909 may relieve a few towns (at present only fourteen out of a total of about five hundred) from any local taxation whatever for public schools, that is a matter which may be considered by the Legislature in the performance of their duty, but does not of itself, in the absence of any restrictive constitutional provision, render the act unconstitutional and void.[7]

Finally, in considering Sawyer's claim that the system of financing public schools violated the Equal Protection clause of the Fourteenth Amendment of the United States Constitution, the court again sustained the Maine system. To the court the object of this Amendment was simply to prevent discriminatory treatment. If, however, all persons subject to a law are treated alike, when under like circumstances and conditions and with respect to the liabilities imposed by a law, there is no violation of this Amendment. Since the court viewed the Maine school finance system as providing persons under similar circumstances and conditions with similar treatment, this final argument was also summarily rejected.

Sawyer v. Gilmore contained the first seeds of arguments that would ultimately be taken before the United States Supreme Court in 1973. It also foreshadowed the results of numerous attacks on state aid to public school systems. Perhaps overly simplified, the lesson learned in this 1912 case was clear: state legislatures, ceteris paribus, have plenary power in establishing and implementing public school state aid finance systems.

Sawyer v. Gilmore, while the opening volley in the battle to utilize the judicial system to challenged alleged deficiencies in state aid systems, was not the only pre-Serrano I case of significance. Following a decade of relative inactivity, the Ohio Supreme Court was called upon in Miller v. Korns to decide the constitutionality of an act involving the legislative appropriation of public school funds.[8] In Ohio, Section 2, Article 6 of the Constitution provided as follows:

> The General Assembly shall make such provisions, by taxation, or otherwise, as, with the income arising from the school trust fund, will secure a thorough and efficient system of common schools throughout the state...[9]

Based upon this Constitutional provision the Ohio General Assembly enacted legislation imposing a tax to be collected and used for an "educational equalization fund." This fund was apportioned so that each city school district, along with exempted school districts, would receive the full amount of the 2.65 mill tax levied in their district. All other school districts also had a 2.65 mill levy but received an apportionment from the state which was based upon the number of teachers and other educational employees employed in the district, pupil transportation costs, and a factor involving pupil attendance days. The results of this two part system provided more than a 2.65 mill return to the city and exempted school districts and less to the remaining districts. This system was challenged based, in part, on the claim that it violated the educational provision of the Ohio Constitution. Fundamentally, the plaintiff (Miller) argued that if the state's distribution of the funds was not uniform then the tax is not uniform and, as such, violates the equal protection benefits of the Ohio Constitution. In rejecting this claim, the Ohio Supreme Court found that the 2.65 mill tax was uniformly levied in each school district in the state. Since the tax was uniformly levied, and since the court found that ". . .so long as a tax is uniformly laid the Legislature may appropriate the proceeds of that tax by a rule that is not uniform,"[10] and so long as it is appropriate, reasonable and in pursuance of a valid state purpose, equal protection of the law was not violated. In applying this conclusion to the specific facts associated with the appropriations of the educational equalization fund, the court incorporated the educational article language of the Constitution and stated:

> This declaration is made by the people of the state. It calls for the upbuilding of a system of schools throughout the state, and the attainment of efficiency and thoroughness in that system is thus expressly made a purpose, not local, not municipal, but state-wide.
>
> With this very state purpose in view, regarding the problem as a state-wide problem, the sovereign people made it mandatory upon the General Assembly to secure not merely a system of common schools, but a system thorough and efficient throughout the state.
>
> A thorough system could not mean one in which part or any number of the school districts of the state were starved for funds. An efficient system could not mean one in which part or any number of the school districts of the state lacked teachers, buildings, or equipment.
>
> In the attainment of the purpose of establishing an efficient and thorough system of schools throughout the state it was easily conceivable that the greatest expense might arise in the poorest districts; that portions of great cities, teeming with life, would be able to contribute relatively little in taxes for the support of schools, which are the main hope for enlightening these districts, while districts underpopulated with children might represent such taxation value that their school needs would be relatively over supplied.
>
> Presumably the instant law was drawn to meet just such a situation. It is expressly designed to appropriate the full amount of the 2.65 mills extra school levy raised

> within the given district to the impoverished school districts, the city districts, the exempted village districts, which have more children than can adequately be provided for under the former system of levies, and the balance to other districts in proportion to the number of their teachers, employees, expense of transportation, and number of attending pupils. In the attainment of that purpose, not by exemption from taxes but by the use of the taxes within the district, the Legislature followed a method well calculated to secure the attainment of a legitimate and proper state purpose.[11]

This two category system was considered "reasonable" by concluding that school districts "should receive aid in varying proportions according to their needs." Since the city and exempted school districts were "crippled for lack of school funds," the State could allocate more educational equalization funds to these districts than the remaining districts. As stated by the court:

> The legislature. . .in the exercise of its sworn duty to the schools, lays the state tax equally upon taxable property in Ohio and apportions the tax, not arbitrarily, not unreasonably, but wisely, in an effort to equalize education and raise its standards throughout the State. Such a theory must commend itself to every citizen.[12]

Sixteen years after Miller v. Korns, the Pennsylvania Supreme Court, in a case involving teacher tenure, also recognized the extraordinary authority over education vested in the Pennsylvania General Assembly.[13] Under the Pennsylvania Constitution, Article 10, Section 1, the General Assembly was directed to "provide for the maintenance and support of a thorough and efficient system of public schools."[14] Under this provision the court, in both recognizing the power of the legislature and the limitations on the courts, recognized the Constitution "has placed the educational system in the hands of the legislature, free from any interference from the judiciary save as required by constitutional limitations."[15] The court specifically stated that it was "not for the courts to determine the wisdom" of this public policy, but the court may only "ascertain the legislative intent."

This perspective was further reinforced in a decision rendered by the Supreme Court of Oklahoma in 1947.[16] Unlike the Pennsylvania situation involving equalization funding, this case was instigated in an effort to require the State Board of Education to appropriate state aid funds in an amount sufficient to maintain a "minimum program" of education. Under Oklahoma statutes the amount of money necessary for the plaintiff school district to maintain a "minimum program of education" was $172,898.38 for the 1945-46 school year. The "minimum program income" for the school district for that year was defined by statute and was computed by including the estimated state apportionment of earnings of the State School Land Commission and automobile license fee collection. The difference between the cost of a minimum program and the amount of the minimum program income determined the amount to be apportioned and disbursed as state aid which was originally fixed at $94,949. When the final state aid payment was received by the school district the total equaled $86,988, or $7,961 less than the original figure. Prior to receiving the final payment the actual apportionments from the earnings of the School Land Commission and from automobile license fee collection exceeded the estimated income from these sources also in the amount of $7,961. A legal action was brought to enforce payment of the balance of the original amount.

As analyzed by the court, the purpose and intent of Oklahoma's education statutes was to provide funds to supplement those already allocated or earmarked for school purposes sufficient to enable all public schools to maintain a minimum program of education. What constitutes "minimum program" support was set out in statute and provided:

> The funds apportioned and disbursed to the several school districts of the State shall be for the purpose of aiding each school district or separate school receiving the same to finance its school budget for each fiscal year. The State Board of Education shall notify the School District Board or the Board of Education of each district, the County Treasurer, and the County Excise Board of the amount said district is to receive from the funds apportioned under the provisions of this Act and disbursed according to the provisions hereof. Thereafter, if the State Board of Education should ascertain that any of the factors on which apportionment or allocation of State Aid to any school district have so changed as to disqualify such district or to reduce the difference between the cost of the Minimum Program and the amount of Minimum Program Income, then the State Board of Education shall forthwith notify such school board or board of education, and the treasurer thereof, as to the amount of reduction in State Aid;. . .[17]

From this provision the court concluded that the burden placed on the State Board of Education was that of allotting additional funds to meet the guaranteed minimum program prescribed by law. When this minimum program funding level was met the Board could "reduce the difference between the cost of the Minimum Program Income" as was done in this instance.[18] As viewed by the court, the intent of this legislation was the realization by the Legislature that local funds would not be sufficient for the maintenance of the educational program contemplated by the statute so the legislature provided for additional funding to be provided from the state treasury. It was not, however, the intent of the legislature that this state aid should be used to build a cash surplus. The use of a minimum program income consideration for support of a minimum educational program in excess of the income and revenue provided locally was, therefore, intended to "reduce the difference between the cost of the Minimum Program and the amount of Minimum Program Income."[19] Since the local receipts in this case exceeded the anticipated amount by $7,961, the amount of state aid necessary to supplement the district's minimum program income could legally be correspondingly reduced.

While the prior cases were brought before state courts, federal courts were also the cite of challenges which included questions of state aid systems. In an early federal case originating from Louisiana concerning public school desegregation, the United States District Court for the Eastern District of Louisiana provided an early perspective of the federal courts view concerning the authority of a state to establish a public school aid system.[20] The Louisiana Constitution contained a long and detailed provision providing for the source and apportionment of funds to be used in the operation of the State's elementary and secondary schools. Among other factors, this system required a large portion of state funds to be allocated on a "per educable student" basis, and the remaining distribution to be made on the basis of equalization "so as to provide and insure a minimum educational program in all public schools."[21] In denying a challenge to this system as part of this case, the court expressed the following view concerning the federal court's role in judging a state's constitutional provision for public school finance. As stated by the court:

> To declare the provisions of. . . .the Louisiana Constitution. . . unconstitutional and violative of the constitutional rights of the plaintiffs would, in effect, be to declare that the State of Louisiana has no constitutional right to allocate and distribute funds on a per educable basis for the maintenance and operation of a public school system throughout the State. The allocation and distribution of funds pursuant to these constitutional and statutory provisions is required to be made purely and simply on the basis of per educable students in the area, together with an equalization factor being applied, and it in no way depends upon the operation of a segregated or integrated school system. . . .
>
> There simply is no right, privilege, or immunity secured to these plaintiffs by the Constitution and laws of the United States in any way being denied by these respondents when they allocate and disburse funds pursuant to the provisions of. . . . the Louisiana Constitution. . .[22]

The Supreme Court of South Carolina, in a case primarily involving the issuance of school bonds, upheld a state aid system while recognizing that inequities were a part of the system.[23] Following the principle that, on both a county-wide and a State-wide basis, public policy in South Carolina was "to tax the wealth where it is, in order to educate the child where he is,"[24] the court recognized that the revenue produced by the State's sales and use tax was allocated by the State to school districts solely on the basis of pupil enrollment. Plaintiffs in this case claimed, in part, that inequities, particularly with respect to facilities, existed among school districts, that the needs of school districts were not in proportion to their respective per pupil enrollments, and that the per pupil enrollments of the respective school districts were not in the same proportion as the actual assessed values of the respective school districts. Under the South Carolina Constitution, a county-wide tax was to be apportioned among the county's school districts on the basis of pupil enrollment. Under this Constitutional provision the court recognized that "certainly among the school districts of the State which enjoy the benefit of this tax. . .inequities existed both as to need and as to the ratio of assessed value to pupil enrollment."[25]

As viewed by the court, while school funds may not be distributed by the State on an arbitrary basis, the mere fact that tax monies are apportioned so that some school districts received less than the amount of the levy in their county did not constitute a lack of uniformity. The taxes were viewed as being apportioned reasonably in order to equalize educational standards throughout the State as well as within counties where a county-wide equalization levy was imposed on the entire county for the purpose of assisting poorer school districts. In addition, this court state:

> It would be difficult to arrive at a more just basis for apportionment than the basis provided here. Inequities may result, but that is not in itself fatal because, while equality may be the aim of the law, it is a goal which is seldom in fact achieved; and this is true no less in the case of the expenditure of public monies.[26]

In 1964, the Georgia General Assembly passed a "Minimum Foundation Program of Education Act" which classified the state's schools into two separate divisions.[27] One division, the independent school systems, were located in incorporated municipalities containing greater taxable wealth and greater wealth per capita and per pupil. The other division, the county school systems, which were located in unincorporated and rural areas, had significantly less

taxable wealth. The expressed "legislative intent" of this Act, as expressed in Section 2, provided that:

> The General Assembly of Georgia, recognizing the importance and extreme necessity of providing improved educational opportunity for all Georgians--children, youth, and adults; of establishing equality of educational opportunity for Georgia's children and youth regardless of where they may live or what their station in life may be; of establishing and maintaining minimum standards for public schools so that every Georgia child and youth can attend an accredited public school; of improving the quality of education through continued development and improvement of balanced programs designed to provide academic and occupational preparation of Georgia's children and youth for adult life in this age; of developing a public school program that will attract, hold and fully utilize competent professional personnel in the public school systems of this State; of establishing and maintaining adequate planning, research and experimentation programs so as to assure continued future improvement of public school education in Georgia; of providing for better efficiency in the operation of public schools, elimination of waste, and better utilization of existing school services and facilities; of the improvement of Georgia's public education program and facilities; of the need to assure Georgia's children and youth of receiving an improved minimum level of education; and of the need for providing a method whereby all Georgians shall pay their fair share of the cost of such program, and recognizing fully its responsibility to provide a means whereby the foregoing needs might more readily be met, does hereby establish a State Minimum Foundation Program for the education of Georgia's children and youth.[28]

The Act went on to provide, in Section 6, that the several county, independent and area public school systems were local units of school administration and, in Section 3, that the State Board of Education would adopt rules and regulations necessary for carrying out the Act, and that, under Section 4, the State Superintendent of Schools was vested with the authority of administering this Act.

The Act provided two separate methods or procedures to calculate the financial ability of local units of school administration to raise funds in support of the local unit's minimum foundation program for education. One method applied to each independent school system located within a county, and the other method or procedure applied to all other local units of school administration. Section 22 (B) of the Act, provided for these procedures as follows:

> The financial ability of each local unit of administration to raise funds in support of the local unit's minimum foundation program of education for the 1965-66 school year, commencing on July 1, 1965, and for each year thereafter shall be calculated as follows:
>
> (1) Multiply the percent that the equalized adjusted school property tax digest of each county is of the total equalized adjusted school property tax digest for the State as a whole by that portion of the estimated cost of the State-wide minimum foundation program for the fiscal school year to be paid by local funds, calculated in accordance with provisions of subparagraph (2) of this Section. The sum

obtained by this multiplication shall be the amount of funds to be raised within a county in support of the cost of providing a minimum foundation program of education in the public schools of the county. Where two or more counties have merged or consolidated into a single area public school system, the sum obtained by the foregoing multiplication for each of the counties within the resulting area public school system shall be combined and the combined sum shall be the amount of funds to be raised within the area public school system in support of the cost of providing a minimum foundation program of education in the public schools of the area public school system determined in accordance with the local financial ability of the counties within such school system. In those counties of the State which have more than one school system with the county, the amount of local funds to be put up by the several local units of administration within the county in support of the cost of providing a minimum foundation program of education in the public schools of the local unit of administration shall be determined by multiplying the per cent that the equalized adjusted school property tax digest of the respective local unit of administration is of the total equalized adjusted school property tax digest of all local units of administration in the county by the amount of local funds to be raised by or within the county in support of the cost of providing a minimum foundation program of education in the public schools of the county, provided, however, that the equalized adjusted property tax digest of each independent school system located within a county shall be calculated on the basis of 133 1/3 per cent of the county equalized adjusted school property tax digest of all property located within the territory of the independent school system.

(2) The State Board of Education shall determine the portion of the estimated cost of the State-wide minimum foundation program to be paid by local funds by multiplying the estimated cost of the State-wide minimum foundation program for the school year by the percentage share of the cost of such State-wide program to be paid by local funds on a State-wide basis. Commencing with the 1965-66 school year, beginning on July 1, 1965, the estimated cost of the State-wide minimum foundation program shall be shared on a State-wide basis of eighty-four per cent (84%) State funds and sixteen per cent (16%) local funds, provided, however, that the share of the estimated cost of the State-wide minimum foundation program to be paid by local funds shall thereafter be increased at the beginning of each subsequent fiscal school year by one percentage point per year for four years, so that commencing with the 1969-70 fiscal school year the State-wide cost of the minimum foundation program shall be shared on the basis of eighty per cent (80%) State funds and twenty per cent (20%) local funds.

(3) The sum of the equalized adjusted school property tax digest of each county in the State, and of each independent school system located within the several counties in the State, and the sum of the equalized adjusted school property tax digest for the State as a whole, shall be furnished to the State Board of Education by the State Auditor on or before February 1 of 1965 and each year thereafter.[29]

A challenge to this funding system was brought by Ingram and other members of the City of Decatur Board of Education against the State Superintendent of Schools, Payton, and the Georgia State Board of Education. Fundamentally, this challenge sought to require the defendants to calculate the local financial ability of the Independent School System of the City of

Decatur according to the provisions of the 1964 Act without applying the provisions Section 22(B) (1) of the Act, which would result in allotting to their district "its lawful portion of state contributed minimum foundation program of education funds."[30] Ingram also requested that the court declare unconstitutional that portion of Section 22(B) (1) which provided that "the equalized adjusted school property tax digest of each independent school system located within county shall calculated on the basis of 133 1/3 per cent of the county equalized adjusted school property tax digest of all property located within the territory of the independent school system."[31] This provision was claimed to be in violation of three Georgia Constitutional provisions which held:

> Laws of a general nature shall have uniform operation throughout the State, and no special law shall be enacted in any case for which provision has been made by an existing general law. No general law affecting private rights, shall be varied in any particular case, by special legislation, except with the free consent, in writing, of all persons to be affected thereby; and no person under legal disability to contract, is capable of such consent (Art. I, Sec. IV, Par. I, Code Ann. Sec 2-401); protection to person and property is the paramount duty of government, and shall be impartial and complete (Art. I, Sec. I, Par. II, Code Ann. Sec 2-102); and no person shall be deprived of life, liberty, or property, except by due process of law. (Art. I, Sec. I, Par. III, Code Ann. Sec. 2-103).[32]

With respect to the constitutionality of Section 22(B) (1), the Supreme Court of Georgia found the main issue of law to be whether there was "a rational basis for different classification of local units of school administration in the Minimum Foundation Program of Education Act so as to create disparity of fiscal treatment in such manner as to impose upon independent school systems located within a county the requirement to pay a greater share of the costs of such program than is required by other local units of school administration in order to share in state-contributed funds to carry out the minimum foundation program of education."[33] The main thrust of the argument was that "the financial ability of each local unit of school administration in Georgia to raise funds in support of the local unit's minimum foundation program of education is not calculated on a uniform basis in that independent school systems located within a county are required to put up funds calculated on the basis of 133 1/3 percent of the county equalized adjusted school property tax digest of all property located within the territory of the independent school system, while such financial ability of local units of administration in Georgia comprising an entire county is calculated on the basis of 100 percent of the equalized adjusted school property tax digest of all property located within the territory of such local unit of administration. The uniformity of the Act is thus destroyed."[34] Appellants argued that such a classification was unreasonable, inequitable, unjust and partial. In summarily rejecting these arguments the court stated:

> In many decisions of this court, the right of the General Assembly to classify the objects and subjects regulated on a different basis has been sustained where such classification is not arbitrary but has a reasonable relationship to the subject matter, object and purposes of the statute. . . .
>
> There is a reasonable basis for classifying county school systems and independent school systems separately as to their respective support of their schools and imposing upon the independent school systems a burden of support by local taxation greater than that required of a county system in order to receive state funds to

support the minimum foundation program. There are several factors that the General Assembly might have considered in making this classification. (a) All of the independent school systems are located in incorporated municipalities, (b) there is a greater taxable wealth in cities than in unincorporated and rural areas, (c) cities are likely to have a greater wealth per capita or per pupil than suburban county school systems, (d) county school systems have constitutional limitations on their power to tax for school purposes, whereas a municipal independent school system is subject only to the limitations of its charter, and (e) the ratio of taxable wealth to the number of children to be educated is related to the purpose of the minimum education foundation program so that each local system bears its fair share of the total local effort required.

The General Assembly had the right in the distribution of state funds to make such distribution in recognition of the financial, taxable wealth and other differences between city and county school systems. The classification here having reasonable basis does not offend the Constitution because it is not made with mathematical nicety or because in practice it results in some inequality.[35]

Finally, the court offered what may be viewed as "judicial advice" to the Decatur Board of Education by stating:

If the independent school system of the City of Decatur wants the State Board of Education to allocate more of the state moneys for the support of its system, the request should be made to the General Assembly and not to the courts.[36]

In 1969, a significant case involving the distribution of public school funds was decided by the U.S. District Court, W.D. Virginia.[37] This case challenged the constitutional validity of the Virginia statute establishing the formulae by which state-aid was distributed to schools. The mandate of the Virginia Constitution provided that: "The General Assembly shall establish and maintain an efficient system of free schools throughout the State."[38] Residents of Bath County claimed that they suffered discrimination by the manner in which this constitutional mandate was implemented by the General Assembly; and, additionally, claimed the system:

. . .creates and perpetuates substantial disparities in the educational opportunities available in the different counties and cities of the State, denies children attending public schools of the County, (Bath) including Plaintiff Children, educational opportunities substantially equal to those enjoyed by children attending public schools in many other districts of the State, and is thereby repugnant to the equal protection clause of the Fourteenth Amendment to the Constitution of the United States. . .

The Act, and particularly its formulae for the apportionment of State Funds, utterly fails in any manner or to any extent whatsoever either (i) to relate to any of the variety of educational needs of the several counties and cities of the State of Virginia--much less weigh the relative acuteness of these needs or provide any sort of balanced response to them, or (ii) to take into account any factors which would tend to equalize the educational opportunities made available in public schools in different parts of the State.

> The Act, and particularly its formulae for the apportionment of State Funds, fails to take into account in any manner whatsoever, or to compensate to any extent for, substantial differences in the levels of schools construction costs, salaries of teachers, administrators and other public schools employees and other expenses of public elementary and secondary education which prevail in different areas of the State of Virginia.[39]

In composite, these claims contended that the Act failed to meet the Constitutional obligation as demonstrated by the marked deficiencies of the Bath County School physical and instructional facilities when compared with those of the other political subdivisions in Virginia. These differences were claimed to be evidence of inequality of treatment and a lack of equal protection of the laws. The state-aid system complained of was described in a prior court action in this case.[40] Commencing with the 1948-49 school term, Virginia established the Minimum Education Program. As the title indicates, it represented a program which was determined necessary to provide each child in the State a minimum education. To find the program's cost a Basic State School Aid Fund was created. It fixed a minimum program cost for every political subdivision of the State, i.e. counties and cities. The minimum program cost in each district was declared to be the aggregate of two items. The first was the amount of the instructional salaries when computed by a stated formula for each teacher position. The second item was the product of the average daily attendance (ADA) multiplied by $100 in 1966-68 ($80 in 1964-66) per pupil. The subdivision was required to expend at least this total each year for its schools. A contribution to be made by the State to the cost in every political subdivision was also specified. It was comprised of (1) a basic State share and (2) a supplementary State share. The basic State share amounted to 60% of the instructional salaries. The supplementary State share was reached by subtracting from the minimum program cost (the gross instructional salaries plus the total of the $100 per pupil ADA) the following items: (1) the basic State share; (2) an amount equivalent to a uniform tax levy of 60 cents per $100 of true values of local taxable real estate and public service corporation property in the subdivision; and (3) 50% (in 1966-68) of the impact funds receivable by the subdivision from the Federal government for operating costs. A maximum was fixed for the supplementary State share. The responsibility for the administration of this allocation of State money was placed in the office of the State Board of Education. Until the 1956-57 school session the State deducted nothing from its own assistance by reason of the impact moneys. In certain later years it deducted all of it. In the 1964-66 biennium it reduced the deductions to two-thirds, and for the 1966-68 to one-half, of the Federal funds. As a basis of their challenge, the plaintiffs relied on the Constitution of Virginia provisions requiring: "The General Assembly shall establish and maintain an efficient system of public free schools throughout the State."[41] They claimed that the State failed to meet this Constitutional obligation as evidenced by the marked deficiencies of the Bath County School physical and instructional facilities, when compared with those of the other political subdivisions in Virginia. These differences, it was argued, evidenced an inequality of treatment--want of equal protection of the law--of Bath County. While the court recognized that the claimed deficiencies and differences complained of did in fact exist, it did not find that the Bath County Schools were "creatures of discrimination by the State." The court found that both cities and counties did in fact "receive State funds under a uniform and consistent plan," and concluded by stating:

> Truth is, the inequalities suffered by the school children of Bath are due to the inability of the county to obtain, locally, the moneys needed to be added to the State contribution to raise the educational provision to the level of that of some of the other counties or cities. The blame cannot be placed on the people or the officials of the county. Rather it is ascribable solely to the absence of taxable values

> sufficient to produce the required moneys. The tax rate and the appropriations have been strained to afford the children better schools. Actually, the plaintiffs seek to obtain allocations of the State funds among the cities and counties so that the pupils in each of them will enjoy the same educational opportunities. This is certainly a worthy aim, commendable beyond measure. However, the courts have neither the knowledge, nor the means, nor the power to tailor the public moneys to fit the varying needs of these students throughout the State. We can only see to it that the outlays on one group are not invidiously greater or less than that of another. No such arbitrariness is manifest here.[42]

As a last effort, the plaintiffs appealed this decision to the United States Supreme Court.[43] In a per curiam decision without comment by any of the Justices, the decision of the lower court was affirmed. In its first significant opportunity to consider a challenge to a state school aid system containing admitted inequities, the Supreme Court, with Mr. Justice Douglas and Mr. Justice White being of the opinion that the Court had probable jurisdiction and the case should have been heard by the Court, declined to hear oral arguments in this case. It would not be until Rodriguez four years later that the Supreme Court would rule on a state aid to public school finance case.

Although the Supreme Court decided not to hear Burrus, advocates of school finance reform did not discontinue their attempts to seek change in various judicial systems. One year after the Courts refusal to hear Burrus, a Kentucky Court of Appeals was called upon to consider a case challenging statutes requiring the distribution of revenue to various school districts located within a county on an average daily attendance (ADA) basis.[44] The ADA basis was prescribed by Kentucky statutes and was intended to provide additional revenue to support schools in counties with a population of 300,000 or more. Under the Kentucky Constitution:

> The General Assembly shall, by appropriate legislation, provide for an efficient system of common schools throughout the State.[45]

Of primary interest in this challenge is the court's view of what local schools legally are and what powers are held by the Kentucky General Assembly with respect to determining school finance procedures. The court, under the above Constitutional provision, found that:

> Certainly there no are constitutional guarantees that local school districts, which are purely creatures of the legislature in the creation and alteration, must be regarded by the legislature as autonomous fiefdoms for all purposes. . .a school district is, nevertheless, an agency of the state subject to the will of the legislature and existing for one public purpose only--to locally administer the common schools within a particular area subject to the paramount interest of the state.[46]

Given this superiority of the legislatures position in deciding educational issues, the court found that the legislature did have the power to determine "a manner of distributing the proceeds of the tax to the school systems located in that county on a basis it deemed appropriate" and that the population and ADA provision in Kentucky's school laws" does not contravene the expressed will of the people contained in the Constitution of Kentucky."[47]

The final case of significance to be litigated prior to the Serrano I decision originated in the State of Florida.[48] The primary attack in this case was the claim that a Florida statute which provided that any county that imposed on itself more than a 10 mill ad valorem property

tax for educational purposes would not be eligible to receive State funds for the support of its public education system. The plaintiffs claimed that this statute violated the Equal Protection Clause of the Fourteenth Amendment. The theory of the attack may be described as follows:

> At the time the Act was passed in February 1968, 24 Florida counties had imposed on themselves taxes in excess of this 10-mill limit for the 1968-69 school year. To avoid losing state funds, each of these counties is collecting only the 10-mill statutory maximum. The complaint charges that the state statute which imposes this limit on the authority of the counties to tax themselves violates the Equal Protection Clause of the United States Constitution because the state limitation is fixed by reference to a standard which relates solely to the amount of property in the county, not to the educational needs of the county. Counties with high property values in relation to their school population are authorized by the state to tax themselves far more in relation to their educational needs than counties with low property values in relation to their school population. Thus, Charlotte County may raise by its own taxes $725 per student, while Bradford County is permitted by the State to raise only $52 per student. To limit the extent to which a county may tax itself to provide for its educational needs by reference to the amount of property in the county, is arbitrary and unreasonable and therefore violates the Equal Protection Clause because it thereby fails to provide Florida children with an economically equal educational opportunity.[49]

In setting parameters for its analysis, the court stated:

> Should plaintiffs prove their alleged set of facts, the dispute will to a large extent be limited to a consideration of some recently developed ideas of equal protection. The novelty of the constitutional argument should not, however, blind us to our narrow duty of determining the sufficiency of alleged facts. Taking plaintiffs' allegations (that the State, which supplies approximately 60% of operating funds to the Board of Public Instruction, will cut off its contributions should the counties levy more than 10 mills of local funds) as true, we note that plaintiffs' claims may find some support in recently acceptable legal theories. The equal protection argument advanced by plaintiffs is the crux of the case. Noting that lines drawn on wealth are suspect and that we are here dealing with interests which may well be deemed fundamental, we cannot say that there is no reasonably arguable theory of equal protection which would support a decision in favor of the plaintiffs.[50]

This statute, according to the complaint in this case, violated Equal Protection Clause guarantees because the State of Florida, which supplied approximately 60% of the operations funds to the Board of Education, would cut off its contributions should a county levy more than 10 mills of local funds, and would, therefore, draw lines based on wealth which were suspect under the Fourteenth Amendment. This argument, that wealth was a "suspect classification," had recently been upheld by the United States Supreme Court in other cases dealing with fundamental rights.[51]

After first dismissing the suit,[52] and then finding that the case did present a substantial constitutional question which could be dealt with by federal courts,[53] the United States District Court for the Middle District of Florida heard the claim that this statute, commonly referred to as the "Millage Rollback Act," violated the Fourteenth Amendment's Equal Protection Clause. Under the Florida state aid system public schools were financially supported by statewide and

local taxation. Minimum Foundation Program (MFP) funds were appropriated by the state and distributed to the counties in accordance with certain indices of the educational needs of a particular county. This program was not under attack. By its calculations the MFP determined the cost of funding a minimal educational system in a county. From this total cost there was deducted a certain minimum amount which each county must raise itself if it desired to receive state MFP funds. The difference was the amount of MFP funds which the state appropriates to the county.

The other source of funds for the support of public education was derived from local taxation. Local taxes were of two kinds. The first, known as County Millage, was imposed by the School Board and could not exceed ten mills. (Fla. Const. 1968 Revision, art. VII 9, F.S.A.) The second, known as District Millage, had to be authorized by vote and then be imposed by the School Board. Additionally the Federal government contributed about two or three percent of public education funds in Florida.

Under the Millage Rollback Act, (MRA) the District and County millages could not exceed in the aggregate ten mills, plus the millage necessary to provide district building and bus funds, funds for debt service and funds for junior college support. These latter funds were not involved in, nor were they material to, the determination in this case. Prior to the passage of the MRA, the voters in 24 counties had authorized their school boards, for the school years 1967-68 and 1968-69, to impose District Millage in addition to the ten mills of County Millage which could be imposed by a board without voter authorization. With the passage of the Act, each of these 24 counties "rolled back" its millage to the ten mill limit for the 1968-69 school year to avoid losing state MFP funds. The result was to reduce the amount of money derived from local taxes for educational purposes which counties could raise for themselves. Measured by the reduction in millage from the year before the Act was passed, the loss exceeded $50,000,000.00.

The plaintiffs contend that the MRA violated the Equal Protection Clause of the Fourteenth Amendment because the limitation was fixed by reference to a standard which related solely to the amount of property in the county, not to the educational needs of the county. The plaintiffs argue that the Act promoted no compelling state interest, and it was arbitrary and unreasonable because it failed to provide Florida children with an economically equal educational opportunity. The defendant State Board of Education countered by contending that the difference in the dollars available did not necessarily produce a difference in the quality of education; that the relief sought could not remedy the evil alleged; and that the Act did not constitute a blanket prohibition against a county's levying additional ad valorem taxes because it may choose to do so and forego its MFP funds. The count, recognizing that, in the abstract, "the difference in dollars available does not necessarily produce a difference in the quality of education," found the abstract "must give way to proof to the contrary in this case."[54] For example, the enforced millage reduction in Broward County alone exceeded $1,300,000. As a result, the Board of Public Instruction of Broward County informed the State Superintendent of Schools that it could not balance its budget for the 1969-70 school year without exceeding the ten mill limit. Charlotte County, by using the ten mill limit, could raise by its own taxes, $725 per student, while Bradford County, also using the ten mill limit, can raise only $52 per student.

With respect to these examples the court stated: "What apparently is arcane to the defendants is lucid to us--that the Act prevents the poor counties from providing from their own taxes the same support for public education which the wealthy counties are able to provide."[55] (Emphasis in original.) The court continued by squarely addressing the Equal Protection claim by the plaintiffs. As stated by the court:

> We cannot circumnavigate the issue squarely presented by the plaintiffs,--i.e., does the Act, which imposes a ten mill limit on the authority of the counties to tax themselves without losing MFP funds, violate the Equal Protection Clause because the limitation is fixed by reference to a standard which relates solely to the amount of property in a county and not to the educational needs of the county? The determination of this question depends first upon whether there is any rational basis for the distinction drawn. If there is a rational basis for the distinction, it must be determined whether the right which is infringed is "a basic, fundamental right," and, if so, whether the distinction which the legislature has drawn serves a "compelling state interest."[56]

Starting with the proposition that the Equal Protection Clause requires "the uniform treatment of persons standing in the same relation to the governmental action questioned or challenged," the court recognized that, even though the Act applied uniformly to each county in Florida, it may still violate the Equal Protection Clause if "its effect is discriminatory." Within this framework the court raised and answered several questions:

> What rational basis can be found for the distinctions that are inherent in the Act? Do they have any rational relationship to a legitimate state end, or are they based on reasons totally unrelated to the pursuit of that goal? What interest has the State of Florida in preventing its poorer counties from providing as good an education for their children as its richer counties? As postulated by the plaintiffs, "The legislature says to a county, 'You may not raise your own taxes to improve your own school system, even though that is what the voters of your county want to do.'" We have searched in vain for some legitimate state end for the discriminatory treatment imposed by the Act. . . .
>
> Stressing education as a "sine qua non to the proper functioning of our policy," plaintiffs urge that education must be regarded as a fundamental right and that rather than apply the "rational basis" standard, the Act can be sustained only if it can be shown to promote a "compelling governmental interest." Having concluded that there is no rational basis for the distinction which the legislature has drawn, we decline the invitation to explore the fundamental-right-to-an-education thesis, and thus we do not reach the more exacting "compelling interest" approach.[57]

This analysis, therefore, being based on the application of a "rational basis" test, was directed toward the interest of the State of Florida in enforcing the MRA as opposed to the county school districts interest in being able "to determine their own tax burden according to the importance which they place upon public schools." The MRA was viewed by the court as:

> The Florida Act prevents the local Boards from adequately financing their children's education. The complaint is not that the state permits the Board to spend less, but that it requires them to spend less. Plaintiffs are asking to be able to raise more money locally. . . Irrespective of the plaintiffs' successful attack on the Act, we know that there will continue to be disparities in per pupil expenditures in Florida, either because some counties may not desire to spend as much as other counties on the education of their children, or because, in the poorer counties, they cannot.[58] (Emphasis in original.)

In concluding its analysis, the court found that the MRA requiring, as a condition of participation in the state's Minimum Foundation Program, a local levy not to exceed 10 mills was a violation of the Equal Protection Clause of the Fourteenth Amendment and declared the Act unconstitutional. Since the Equal Protection Clause "forbids a state from allocating authority to tax by reference to a formula based on wealth," the court enjoined the State Board of Education from taking any action against county school districts because of their refusal to limit local taxes to the 10 mills stipulated in the MRA. Therefore, the court permitted the counties disadvantaged by the MRA to raise their taxes above the 10 mill limit and required the Florida State Board of Education to continue to distribute Minimum Foundation Program state aid funds to these counties in the same extent as they had been receiving. In spite of this decision, the Florida case was not over. The Governor of Florida, as an appellant, brought this decision to the United States Supreme Court and the Court vacated and remanded this case.[59]

In vacating this case, the Supreme Court recognized that another case attacking the MRA primarily on state law and constitution grounds had been filed in a Florida Circuit Court. The Governor argued that the MRA was only "one aspect of a comprehensive legislative program for reorganizing educational financing throughout the State to more nearly equalize educational opportunities for all the school children of the State" which would "more than make up the loss suffered by a school district under the limitation of 10 mills in the assessment of ad valorem taxes."[60] As viewed by the Court, since "the manner in which the program operates may be critical in the decision of the equal protection claim, that claim should not be decided without fully developing the factual record at a hearing."[61] The case was thus vacated and remanded in order to allow the new Florida case to develop this factual record. Before this new case was completed, however, the California judicial system ruled on Serrano I and a new round of litigation was born.

CHAPTER II

SERRANO I: THE FIRST SUCCESSFUL CHALLENGE TO A STATE AID SYSTEM OF PUBLIC SCHOOL FINANCE

In 1967, John Serrano, the father of a student in a Los Angeles area public school district, complained to the principal of this son's school regarding the quality of services available. The principal informed Mr. Serrano that the school could not afford more or better instruction and counseled him to move to one of the wealthier districts nearby. Mr. Serrano viewed this advice, no matter how well intended, as worthless. Instead, he joined with others and brought suit against Ivy Baker Priest, then California State Treasurer, questioning the constitutionality of the manner in which the public schools of California were financed.[62]

John Serrano's legal action was joined by a number of elementary and high school pupils who attended the public schools located in Los Angeles County, California. Together they commenced a class action suit in the Superior Court of Los Angeles County "to secure equality of educational opportunity"[63] Their action was taken not only against Priest, but other public officials who had some direct relationship to the collection and disbursement of state funds and county taxes for the support of the Los Angeles County schools including the State Superintendent of Public Instruction, the State Controller, the Tax Collector and Treasurer of Los Angeles County, and the Los Angeles County Superintendent of Schools. They claimed to represent all children attending public schools in California except those in school districts which afforded "the greatest educational opportunity."[64] At the heart of their complaint was the claim that the system of financing public schools in California violated both the Equal Protection Clause of the Fourteenth Amendment to the Federal Constitution and provisions of the California Constitution since there were "wide variations among school districts in the amount of money spent per pupil, resulting in inferior educational opportunities" for children in those districts which could not offer the greatest educational opportunity.[65] They sought to have the California system of financing public schools declared unconstitutional under the federal and state constitutions and to have the court order a reallocation of school funds in a constitutional manner. Priest and the other defendants demurred to these claims by admitting all material facts and were upheld in the Superior Court's action, leading to an appeal by Serrano.

The Court of Appeals considered that, since the constitutional validity of the entire statutory system of financing California public schools was challenged, this system, and how it operated, must be analyzed. The California Constitution provided for the financing of the system of free public schools. Pursuant to this requirement the California Legislature established a "foundation program" which was defined as the minimum amount of money necessary for the support of public schools. The State Superintendent of Public Instruction computed a foundation program for each elementary and high school district. The amount computed depended upon such variable factors as the type of district, the number of pupils in average daily attendance, a figure computed by adding together the number of students actually present on each school day divided by the number of days school was taught, and the number of teachers employed full time. The state, from the Common School Fund, and the school districts, from the local school tax revenues, contributed toward the foundation program. The contribution of the school districts, known as "district aid," was an amount of tax levied on each

$100 of 100 percent of the assessed valuation in a district, and would produce, if the tax were levied, $1.00 for an elementary district and $.80 for a high school district. The state's contribution toward the foundation program took two forms: (1) "basic state aid," which was required by the California Constitution, consisted of a grant to each district of $125 per unit of average daily attendance for each fiscal year with a minimum of $2,400 per district; and (2) "state equalization aid" which, when the combined amount of district aid and basic state aid was less than the foundation program for a given district, was granted in an amount necessary to make up the difference. Therefore, each district received the full amount of its foundation program if it levied taxes at a rate sufficient to enable it to contribute district aid toward that program. In addition to this state aid and equalization aid, the state granted "supplemental aid" of a maximum of $125 per pupil in average daily attendance for each elementary district with $12,500 or less in assessed valuation per unit of average daily attendance, and a maximum of $72 per pupil in average daily attendance for each high school district with $24,000 or less in assessed valuation per unit of average daily attendance.

In addition to these factors, the governing body of each county was authorized to levy and collect such school district taxes, not to be in excess of prescribed maximum rates, as was necessary to annually produce the amount of money requested by school districts and approved by the county superintendent of schools. The budget submitted by a school district could, therefore, exceed the amount of the foundation program computed for a district. This system led to wide variations among public school districts in tax rates per $100 of assessed property valuation and in the amcunt expended per pupil from one school district to another despite state contributions of basic aid, equalization aid, and supplemental aid.

The plaintiffs claimed that this system of financing California public schools violated the Equal Protection Clauses of the Federal and State Constitutions "because the amount of money spent per pupil varies from one distr t to another according to the wealth of a pupil's parents and the district in which he resides, ... according to his educational needs."[66] In brief, they claimed that equal protection considerations required that the amount of money spent per pupil many not vary on local district wealth but may vary only on the basis of the respective educational needs of pupils. As they did in the lower court, the defendants demurred to this claim and the Appellate Court held for the defendants. In its decision, the court found that the complaint of the plaintiffs did not state a cause of action since the Equal Protection Clauses relied on in the complaint did not "require that the school system be uniform as to quality of education or money spent per pupil."[67] The court concluded that the constitutionally required system must be uniform in terms of courses of study offered and educational progressions. Since this type of uniformity was not challenged by Serrano, the complaint was dismissed.

Serrano appealed this decision to the Supreme Court of California and, in 1971, this court, in a majority opinion, held that the public school financing system, which relied so heavily on local property wealth and taxes, caused substantial disparities among individual school districts in the amount of revenue available per pupil for the district's educational grants, that it invidiously discriminated against the poor, and did, therefore, violate the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution and the California Constitution.[68]

As the litigation developed through the lower courts, with the summary finding that the California system did not violate equal protection provisions, the full range of the charges against the system were not considered. At the Supreme Court level, however, the complaints against the system were fully stipulated as follows:

A. Makes the quality of education for school age children in California, including Plaintiff Children, a function of the wealth of the children's parents and neighbors, as measured by the tax base of the district in which said children reside, and

B. Makes the quality of education for school age children in California, including Plaintiff Children, a function of the geographical accident of the school district in which said children reside, and

C. Fails to take account of any other variety of educational needs of the several school districts (and of the children therein) of the State of California, and

D. Provides students living in some school districts of the state with material advantages over students in other school districts in selecting and pursuing their educational goals, and

E. Fails to provide children of substantially equal age, aptitude, motivation, and ability with substantially equal educational resources, and

F. Perpetuates marked differences in the quality of educational services, equipment and other facilities which exist among the public school districts of the state as a result of the inequitable apportionment of state resources in past years.

G. The use of the "school district" as a unit for the differential allocation of educational funds bears no reasonable relation to the California legislative purpose of providing equal educational opportunity for all school children within the state.

H. The part of the state financing scheme which permits each school district to retain and expend within that district all of the property tax collected within that district bears no reasonable relation to any educational objective or need.

I. A disproportionate number of school children who are black children, are children with Spanish surnames, and are children belonging to other minority groups reside in school districts in which a relatively inferior educational opportunity is provided.[69]

As they had at each of the previous stages, the state and county official defendants again demurred in each instance.

The court began its factual analysis with a recognition of the sources of public school funds. Local property taxes accounted for 55.7 percent; state aid, 35.5 percent; federal funds, 6.1 percent; and miscellaneous sources accounted for 2.7 percent of all public school funds. Over 90 percent of California's public school funds were, therefore, derived from local district taxes on real property and from the State School Fund, with local property taxes being the major source. This in effect made the amount of revenue which a district could raise depend largely on its tax base, i.e., the assessed valuation of real property within its borders. Factually, tax bases in 1969-1970 varied widely throughout the state with the assessed valuation per unit of average daily attendance of elementary school children ranging from a low of $103 to a high of $952,156, or a ratio of nearly 1-to-10,000. The second factor, the tax rate levied by a local district, was subject to a legislated ceiling which could be surpassed in a "tax override" election if the majority of the district's voters would approve the higher rate, which had occurred in nearly all districts. Thus, the locally raised funds which constituted the greatest portion of local

district revenue were primarily a function of the value of the real property within a particular school district, and the willingness of the district's voters to tax themselves for education.

Most of the remaining revenue came from the State School Fund pursuant to the "foundation program," through which the state attempted to supplement local taxes in order to provide a minimum amount of guaranteed support to all districts. With some minor exceptions the foundation program ensured that each district would receive annually, from state or local funds, $355 for each elementary school pupil and $488 for each high school student. This state contribution was supplied in two principal forms; "basic state aid" consisting of a flat grant to each district of $125 per pupil regardless of the relative wealth of the district, and "equalization aid" which was distributed in inverse proportion to the wealth of the district. To compute the amount of equalization aid to which a district was entitled, the State Superintendent of Public Instruction first determined how much local property tax revenue would be generated if the district were to levy a hypothetical tax at a rate of $1.00 on each $100 of assessed valuation in elementary districts and $.80 per $100 in school districts. To this figure, $125 per pupil was added as a district's basic state aid grant. If the sum of these two amounts was less than the foundation program minimum for that district, the state would contribute the difference. Under this system, therefore, the equalization funds guaranteed poorer districts a basic minimum revenue, while wealthier districts were ineligible for such state assistance.

An additional state program of "supplemental aid" was used to subsidize particularly poor school districts which were willing to make an extra local tax effort. For supplemental aid purposed, an elementary school district with an assessed valuation of $12,500 or less per pupil could receive up to $125 more per pupil if it set its local tax rate above a certain statutory level. A high school district with an assessed valuation of $24,500 or less was eligible for up to $72 per pupil if its local tax was sufficiently high.

Although the equalization aid and the supplemental aid did temper the disparities which resulted from the vast variations in local district real property assessed valuation, the court noted that wide differentials remained in the amount of revenue available to individual districts and, consequently, in the level of educational expenditures. In the 1969-70 school year, elementary districts had a range of $103 to $952,156 in assessed valuation per pupil, and a variation in per pupil expenditures ranging from a low of $407 to a high of $2,586. Corresponding ranges for high school districts were $11,959 to $349,093 in assessed valuation and $722 to $1,767 in per pupil expenditures.

Beyond these range differences, plaintiffs cited information and statistics to demonstrate that children residing in property-poor districts tended to have less money spent on their schooling. In order to dramatize the disparities, it was pointed out that in 1968-69 the Beverly Hills school district, with property wealth totaling more than $50,000 per pupil, spent $1,232 per pupil at a tax rate of only $2.38. Conversely, nearby Baldwin Park, with property valued at $3,706 per pupil, spent only $577 per pupil even though it taxed itself at $5.48, a rate more than twice as high as Beverly Hills. State aid offset the difference somewhat, with Beverly Hills receiving only $125 per pupil from the state and Baldwin Park receiving $307 per pupil. Nevertheless, there remained an expenditure discrepancy between the two districts in excess of $450 per pupil.

The court also recognized that state aid, which constituted about one-half of the state educational funds, actually served to widen the gap between rich and poor districts. Since state aid was distributed on a uniform per pupil basis to all districts, irrespective of a district's wealth,

Beverly Hills and Baldwin Park each received $125 from the state for each of its students. Therefore, for Baldwin Park, the basic state grant was essentially meaningless. Under the foundation program the state made up the difference between $355 per elementary student and $47.91, the amount Baldwin Park would raise by levying a tax of $1.00 per $100 of assessed valuation. For Beverly Hills, however, the $125 flat grant had real financial significance. Since a tax rate of $1.00 per $100 of assessed valuation there would produce $870 per elementary student, Beverly Hills was too wealthy to qualify for equalization aid, but still received the $125 per pupil from the state which served to enlarge the economic chasm between it and Baldwin Park. No argument was made that the state could not discriminate in the delivery of state services--for example, the use of fundings for special program services such as special education. However, plaintiffs in Serrano I contended that it was unfair to residences in a property-poor district. Residence in such a school district was argued to be a "suspect classification," one in which discriminatory treatment was unjustified.

Against this factual background, the court considered the complaint that the California school finance system violate the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution. The court specifically recognized the possible application of two different tests for determining if this system did or did not violated the Equal Protection Clause. One possible test against which the system could be judged was that of "rational relationship." Under a rational relationship test the defendants would only be required to show that the California school finance system bore some rational or reasonable relationship to a legitimate state purpose. On the other hand, if education was found to be a "fundamental interest" under the Fourteenth Amendment as was claimed by Serrano, the court could then apply the "suspect classification" test. Under the latter standard the state defendants would be required to show more than a rational relationship behind the school finance system, and that the system, therefore, was related to some legitimate state purpose. Under the suspect classification standard the plaintiffs would bear the burden of establishing not only that the system supported a compelling state interest which justified the laws establishing the system, but would also be required to show that the distinctions drawn by the system were necessary to further that state's interest.

Serrano argued that education was a "fundamental interest," the availability of which could not be conditioned on district wealth. The reasoning was that individuals must be educated in order to pursue rights explicitly guaranteed them in matters such as voting, free speech, and religion. Consequently, in the absence of a "compelling state interest," the state could not discriminate in the quality of school services made available to students based on the wealth of a school district.

The court found that education was a "fundamental interest" and, therefore, the more stringent test of "suspect classification" was the proper test to be applied in this case. In so finding, the court provided the first major "victory" for those who would look toward the judicial system in their efforts to reform state systems of public school finance. Arguments presented by the plaintiffs that the California school finance system classified on the basis of wealth were found by the court to be "irrefutable." As found by the court:

> . . .over half of all educational revenue is raised locally by levying taxes on real property in the individual school districts. Above the foundation program minimum ($355 per elementary student and $488 per high school student), the wealth of a school district, as measured by its assessed valuation, is the major determinant of educational expenditures. Although the amount of money raised locally is also a

function of the rate at which the residents of a district are willing to tax themselves, as a practical matter districts with small tax bases simply cannot levy taxes at a rate sufficient to produce the revenue that more affluent districts reap with minimal tax efforts. . .For example, Baldwin Park citizens, who paid a school tax of $5.48 per $100 of assessed valuation in 1968-69, were able to spend less than half as much on education as Beverly Hills residents, who were taxed only $2.38 per $100.

Defendants vigorously dispute the proposition that the financing scheme discriminates on the basis of wealth. Their first argument is essentially this: through basic aid, the state distributes school funds equally to all pupils; through equalization aid, it distributes funds in a manner beneficial to the poor districts. However, state funds constitute only one part of the entire school fiscal system. The foundation program partially alleviates the great disparities in local sources of revenue, but the system as a whole generates school revenue in proportion to the wealth of individual district.

Defendants also argued that neither assessed valuation per pupil nor expenditure per pupil is a reliable index of the wealth of a district or of its residents. The former figure is untrustworthy, they assert, because a district with a low total assessed valuation but a miniscule number of students will have a high per pupil tax base and thus appear "wealthy." Defendants imply that the proper index of a district's wealth is the total assessed valuation of its property. We think defendants' contention misses the point. The only meaningful measure of a district's wealth in the present context is not the absolute value of its property, but the ratio of its resources to pupils, because it is the latter figure which determines how much the district can devote to educating each of its students.

But, say defendants, the expenditure per child does not accurately reflect a district's wealth because that expenditure is partly determined by the district's tax rate. Thus, a district with a high total assessed valuation might levy a low school tax, and end up spending the same amount per pupil as a poorer district whose residents opt to pay higher taxes. This argument is also meritless. Obviously, the richer district is favored when it can provide the same educational quality for its children with less tax effort. Furthermore, as a statistical matter, the poorer districts are financially unable to raise their taxes high enough to match the educational offerings of wealthier districts. . .Thus, affluent districts can have their cake and eat it too: they can provide a high quality education for their children while paying lower taxes. Poor districts, by contrast, have no cake at all.

Finally, defendants suggest that the wealth of a school district does not necessarily reflect the wealth of the families who live there. The simple answer to this argument is that plaintiffs have alleged that there is a correlation between a district's per pupil assessed valuation and the wealth of its residents and we treat these material facts as admitted by the demurrers.[70]

In holding that education is a fundamental interest, with accompanying Fourteenth Amendment protections and, therefore, may not be conditioned on wealth, the court stated that: "We are convinced that the distinctive and priceless function of education in our society warrants, indeed compels, our treating it as a "fundamental interest."[71] In pointing out five distinct ways in which education is a fundamental interest the court stated:

> First, education is essential in maintaining what several commentators have termed "free enterprise democracy"--that is, preserving an individual's opportunity to compete successfully in the economic marketplace, despite a disadvantaged background. Accordingly, the public schools of this state are the bright hope for entry of the poor and oppressed into the mainstream of American society.
>
> Second, education is universally relevant. Not every person finds it necessary to call upon the fire department or even the police in an entire lifetime. Relatively few are on welfare. Every person, however, benefits from education. . . .
>
> Third, public education continues over a lengthy period of life--between 10 and 13 years. Few other government services have such sustained, intensive contact with the recipient.
>
> Fourth, education is unmatched in the extent to which it molds the personality of the youth of society. While police and fire protection, garbage collection and street lights are essentially neutral in their effect on the individual psyche, public education actively attempts to shape a child's personal development in a manner chosen not by the child or his parents but by the state.
>
> The influence of the school is not confined to how well it can teach the disadvantaged child; it also has a significant role to play in shaping the student's emotional and psychological make-up.
>
> Finally, education is so important that the state has made it compulsory--not only in the requirement of attendance but also by assignment to a particular district and school. Although a child of wealthy parents has the opportunity to attend a private school, this freedom is seldom available to the indigent. In this context, it has been suggested that a child of the poor assigned willy-nilly to an inferior state school takes on the complexion of a prisoner, complete with a minimum sentence of 12 years.[72]

Given this perception of education as a fundamental interest, the court turned to the rationale for it's application of the "strict scrutiny" test to determine if the California public school finance system was necessary to achieve a compelling, as opposed to a simple reasonable, state's interest. The defendants argued that the system was intended to "strengthen and encourage local responsibility for control of public education."[73] This "goal" had two separate aspects; first, the granting to local districts effective decision-making power over the administration of their schools; and, second, the promotion of local fiscal control over the amount of money to be spent on education. In discounting both reasons, the court stated:

The individual district may well be in the best position to decide whom to hire, how to schedule its educational offerings, and a host of other matters which are either of significant local impact or of such a detailed nature as to require decentralized determination. But even assuming arguendo that local administrative control may be a compelling state interest, the present financial system cannot be considered necessary to further this interest. No matter how the state decides to finance its system of public education, it can still leave this decision-making power in the hands of local districts.

The other asserted policy interest is that of allowing a local district to choose how much it wishes to spend on the education of its children. Defendants argue: If one district raises a lesser amount per pupil than another district, this is a matter of choice and preference of the individual district and reflects the individual desire for lower taxes rather than an expanded educational program, or may reflect a greater interest within that district in such other services that are supported by local property taxes as, for example, policy and fire protection or hospital services.

We need not decide whether such decentralized financial decision-making is a compelling state interest, since under the present financing system, such fiscal freewill is a cruel illusion for the poor school districts. We cannot agree that Baldwin Park residents care less about education than those in Beverly Hills solely because Baldwin Park spends less than $600 per child while Beverly Hills spends over $1,200. As defendants themselves recognize, perhaps the most accurate reflection of a community's commitment to education is the rate at which its citizens are willing to tax themselves to support their schools. Yet by that standard, Baldwin Park should be deemed far more devoted to learning than Beverly Hills, for Baldwin Park citizens levied a school tax of well over $5 per $100 of assessed valuation, while residents of Beverly Hills paid only slightly more than $2.

In summary, so long as the assessed valuation within a district's boundaries is a major determinant of how much it can spend for its schools, only a district with a large tax base will be truly able to decide how much it really cares about education. The poor district cannot freely choose to tax itself into an excellence which its tax rolls cannot provide. Far from being necessary to promote local fiscal choice, the present financing system actually deprives the less wealthy districts of that option.[74]

In a summary statement, the court arrived at the following conclusions:

. . .The California public school financing system, as presented to us by plaintiffs' complaint supplemented by matters judicially noticed, since it deals intimately with education, obviously touches upon a fundamental interest. . . .this system conditions the full entitlement to such interest on wealth, classifies its recipients on the basis of their collective affluence and makes the quality of a child's education depend upon the resources of his school district and ultimately upon the pocketbook of his parents. We find that such financing system as presently constituted is not necessary to the attainment of any compelling state interest. Since it does not withstand the requisite "strict scrutiny," it denies to the plaintiffs and other

similarly situated the equal protection of the laws. If the allegations to the complaints are sustained, the financial system must fall and the statutes comprising it must be found unconstitutional.[75]

Finally, the court remanded this case back to the trial court with directions to overrule the demurrers of the defendants and allow them reasonable time to answer the claims of the plaintiffs.

Serrano I represented many possible avenues of argumentation to school finance reformers interested in judicially challenging state aid to public school finance systems. It not only encouraged the argument that education was, for the purposes of the Equal Protection guarantees of the Fourteenth Amendment, a fundamental interest but also that courts should apply the strict scrutiny test when examining the constitutionality of state systems. In addition, Serrano I, by concluding that the quality of a child's public school education could not be a function of the wealth of his/her school district, was the beginning of the judicial recognition of the school finance principle of wealth of fiscal neutrality.

CHAPTER III

BETWEEN SERRANO I AND RODRIGUEZ

After the initial success of the California state aid challenge in Serrano I, separate actions were litigated in Minnesota, Wyoming, and Maryland. In the Minnesota case, the constitutionality of the state's system of financing public elementary and secondary schools was challenged under the Serrano I complaint as a violation of the Equal Protection guarantee of the Fourteen Amendment.[76] The plaintiffs, children attending public school districts, claimed "a right under the Fourteenth Amendment to have the level of spending for their education unaffected by variations in the taxable wealth of the school district of their parents."[77]

Much like the California system, the dollars expended per pupil in Minnesota's public schools was a function of the amount of taxable wealth per pupil located within the boundaries of a school district and was subject to a local educational tax levy. The school districts showed a wide variation in the taxable wealth per pupil with some districts having practically no taxable wealth and others in excess of $30,000 per pupil. The state assisted the poorer districts with "equalizing" aid but in a manner which offset only a portion of the influence of district wealth variations. For example, in 1970-71, if a school district's tax rate was at least 20 mills, it was guaranteed a total of $404 spendable dollars by the state. Thus, if the local levy of 20 mills raised only $200 (in a district with $10,000 assessed valuation per pupil) the state supplemented this with a subvention of $204 per pupil. If the district was sufficiently wealthy that a 20 mill levy raised more than the $404 guarantee, it retained the excess collection and had it available for expenditure.

In addition, the state had guaranteed to every district a minimum state subvention of $141 per pupil. Thus a rich district which raised $450 at the 20-mill rate could spend $591 per pupil. What was important about this flat grant is that it was useful only in the richer districts. Even if it were abolished, those districts poor in taxable wealth would receive no less because the $141 was counted as part of the equalizing aid. As in the previous example, a poor district raising only $200 with the 20 mill local rate would receive $204 from the state in "equalizing" money even if the $141 guaranteed minimum did not exist. Thus this latter guarantee acted in effect as a unique bonus solely for the benefit of rich districts.

Finally, insofar as districts exceeded the 20 mill local tax rate (apparently all poor districts did) they were essentially on their own. For every additional mill on its local property, a district with $20,000 valuation per pupil added another $20 per child in spending; a district with $5,000 valuation per pupil added only $5 in spending. Put another way, above 20 mills there was a high correlation per pupil wealth and the amount available to spend for education for the same mill rate.

To sum up the basic structure, the rich districts enjoyed both lower tax rates and higher spending. A district with $20,000 assessed valuation per pupil and a 40 mill tax rate on local property would be able to spend $941 per pupil; to match that level of spending the district with $5,000 taxable wealth per pupil would have to tax itself at more than three times that rate, or 127.4 mills.

In addition to recognizing this economic disparity, the Minnesota case also ventured into the issue of whether or not a relationship existed between expenditure and educational effectiveness. Recognizing that disagreement existed on this issue, the court concluded that:

> While the correlation between expenditure per pupil and the quality of education may be open to argument, the court must assume here that it is high. To do otherwise would be to hold that in those wealthy districts where the per pupil expenditure is higher than some real or imaginary norm, the school boards are merely wasting the taxpayers' money. The court is not willing to so hold, absent some strong evidence. Even those who staunchly advocate that the disparities here complained of are the result of local control and that such control and taxation with the resulting inequality should be maintained would not be willing to concede that such local autonomy results in waste or inefficiency.[78]

Following the reasoning adopted by the majority in the Serrano I decision, the United States District Court for the District of Minnesota concluded that education was a "fundamental interest" under the Equal Protection Clause of the Fourteenth Amendment and that the proper standard or test to be applied in judging the constitutionality of the Minnesota system was "strict scrutiny" since district wealth was a "suspect classification." This was based on the court's conclusion that the basis of the state aid classification system, district wealth, to a significant degree determined the financing of public education in the state. This classification was "state created" since the state government created and defined the Minnesota public school districts and the state aid finance system. While the state defendants argued that the student plaintiffs in this case were seeking a completely uniform expenditure for each public school pupil in Minnesota, the court found that nothing in this action, or in the prior Serrano I decision, required absolute uniformity of school expenditures. As stated by the court:

> The issue posed by the children, here as in Serrano [I], is whether pupils in publicly financed elementary and secondary schools enjoy a right under the equal protection guarantee of the 14th Amendment to have the level of spending for their education unaffected by variations in the taxable wealth of their school district or their parents. This Court concludes that such a right indeed exists and that the principle announced in Serrano v. Priest [I] is correct. Plainly put, the rule is that the level of spending for a child's education may not be a function of wealth other than the wealth of the state as a whole. For convenience we shall refer to this as the principle of "fiscal neutrality," a reference previously adopted to Serrano [I].[79]

This principle of "fiscal neutrality" was viewed by the court as not only removing state aid discrimination based on local district wealth, but also ". . .allows free play to local effort and choice and openly permits the state to adopt one of many optional school funding systems which do not violate the Equal Protection Clause."[80] In so finding, the court, in a Memorandum and Order, dismissed the state official's motion to dismiss this action.

Less than two months after the Minnesota decision was issued, the Supreme Court of Wyoming, in a case primarily involving the reorganization of school districts which would join affluent school districts with poorer school districts, took judicial notice of the disparities in financial resources between districts in that state.[81] The court noted the tax advantages of school districts with a high assessed valuation, and that if "ad valorem taxes for school purposes were equalized throughout the state," inequalities in expenditures per pupil could be alleviated. For example, the Baroil District, with a levy of one mill against its assessed

valuation, would raise $351 per pupil, while the Star Valley District, with the same levy, would raise only $4.70 per pupil. As briefly stated by the court:

> It will be seen from these figures that affluent districts can provide a high quality education for their children while paying lower taxes. Poorer districts, by contrast, do not have that advantage. The inequality is obvious.[82]

Although the court stated that it could no longer ignore the inequalities in taxation for school purposes, in a later opinion in this same case, it concluded that the situation was properly a matter for the legislature and not the prerogative of the court to substitute its judgment for that of the legislature.[83]

In the third case, the United States District Court for the District of Maryland was also called upon to determine if that state's system for financing public school education was constitutional.[84] The results of this action are significant for conclusions which differed from Serrano I and the Minnesota and Wyoming cases. In this case the court undertook a detailed explanation of the reasons behind its decision not to dismiss the complaint as was argued by defendant--Mandel, the Governor of Maryland--and why it rejected the plaintiff's attempt to hold education to be a "fundamental interest" requiring the application of the "strict scrutiny" test.

Among the grounds argued by the defendants for dismissing this case were that the suit was barred by the Eleventh Amendment to the United States Constitution and that the complaint presented was a political question and was therefore non-justiciable. In considering the argument based on the Eleventh Amendment, the court recognized that the Amendment may bar some federal court suits against a state's government. This Amendment provides:

> The judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by citizens of another state, or by citizens or subjects of any foreign state.

Mandel claimed this provision indicated that this suit was, in fact, an action directed against the State of Maryland itself, inasmuch as it would require not only a cessation of the state's public school aid system but would ultimately require the state to increase the appropriations to public schools made by the Maryland General Assembly so as to bring spending for public education in all districts in the state up to the level of the wealthiest district. The plaintiffs argued that they only asked for "fiscal neutrality" in the system of distributing public school funds. They did not seek to have the court order a particular level of funding but rather a reallocation of available funds on some other basis than the Maryland system which was tied to local district wealth. Given the fact that the changes in the system which might be adopted to achieve fiscal neutrality would be decided by the state, and not by a federal court, the Eleventh Amendment argument of the defendants was rejected.

The court, in rejecting the argument that the issue involved in this case was a political, rather than a justiciable issue, found that the issue was not one involving co-ordinate branches of government. A federal court may not have jurisdiction in conflicts involving co-ordinate branches of state government. In this case, however, the issue was not between branches of state government, and was not therefore a political issue, and court concluded that it did have proper jurisdiction.

The plaintiffs argued, in the same manner as in Serrano I, that education was a "fundamental interest" and that the Maryland classification of school districts based on wealth, when related to providing equal educational opportunities, was a "suspect classification" requiring the court to apply the test of "strict scrutiny." As in Serrano I, the court acknowledged that if this test was to be applied, the state defendants would have the burden of showing that the school aid system's claimed "discrimination" was necessary to promote a "compelling state interest" rather than the system being simply "reasonably related" to a legitimate state interest. In the Maryland case, the court rejected the decision on this question which was presented in Serrano I. The court observed that:

> Few if any guidelines have been suggested by the Supreme Court for determining whether a claimed violation of the equal protection clause should be considered under the strict scrutiny test or under the reasonable basis test. A high degree of subjectivity would appear to be involved in determining whether a subject is to be termed a fundamental interest or whether the classification is to be called suspect ....many cases applying the two test indicate that the different results can be understood only on an ad hoc basis in terms of the subject matter involved [education].[85]

From this perspective, the court refused to recognize education to be a "fundamental interest" under the Equal Protection Clause of the Fourteenth Amendment. Since education was not included in the United States Constitution, and since no decision of the United States Supreme Court had never ruled that education was a fundamental interest of the type requiring the application of the strict scrutiny test, the court stated:

> To hold that the strict scrutiny test applies to legislation of this sort would be to render automatically suspect every statutory classification made by state legislatures in dealing with matters which today occupy a substantial portion of their time and attention. If the test which plaintiffs seek to apply is the appropriate standard here, then a state, on each occasion that a similar Fourteenth Amendment attack were made against a statute dealing with health, education or welfare, would be required to bear the burden of proving the existence of a compelling state interest. This Court cannot conclude that state legislatures are to be straitjacketed by such recently evolved constitutional theory in areas that have traditionally been the exclusive concern of the state.
>
> . . .The Fourteenth Amendment gives the federal courts no power to impose upon the states their views of what constitutes wise economic or social policy. By terming a particular interest fundamental and then applying the strict scrutiny test, a federal court is presented with a ready means for. . .imposing its own policy views upon a state legislature. The complex considerations which enter into devising and financing health, education and welfare programs have traditionally been left to legislative bodies, both state and federal. State legislation of this sort is of course subject to review in federal court under the Fourteenth Amendment, but the proper standard for such review has always been and should continue to be the reasonable basis test.[86]

With this decision involving the Maryland state aid to public schools system, the basic question of education's being considered a fundamental interest under the Equal Protection Clause of the Fourteenth Amendment, along with the question of the applicable standard or test

which courts should apply in such cases, was subject to divided decisions. While the cases originating in California and Minnesota unequivocally held education to be a fundamental interest, and the Wyoming court agreed but was unwilling to act due to its perception that the issue was a legislative rather than a judicial matter, the Maryland case clearly rejected the "education as a fundamental interest" claim. With these decisions, both proponents and opponents of utilizing the judiciary to achieve school finance reform could claim case-law precedent for their respective positions.

CHAPTER IV

RODRIGUEZ IN THE SUPREME COURT

While Serrano I was working its way through the California judicial system, a similar case was instituted in Texas. Originally taken to a three-judge federal district court panel, the case was remanded to trial proceedings in the United States District Court for the Western District of Texas in 1969.[87] In this court, many of the Serrano I-type arguments were presented by the plaintiffs, who were all children throughout the State of Texas living in school districts with low property valuations, including that of education as a "fundamental interest," that the Texas system of financing public education discriminated on the basis of local district wealth, and that the system denied plaintiffs equal protection of the laws under the Fourteenth Amendment to the United States Constitution.[88]

This court recognized that Texas public school districts received funds from federal, state and local sources. Since the federal sources accounted for only about ten percent of the overall public school expenditures, most revenue was derived from local sources and from two state programs--the Available School Fund and the Minimum Foundation Program. In 1970-71, $296 million was allocated through the Available School Fund on a per capita basis determined by the average daily attendance within a district for the prior school year. In the same year, the Minimum Foundation Program provided over one billion dollars for local district salaries, school maintenance and transportation. Eighty percent of the cost of the Minimum Foundation Program was financed from general state revenue with the remainder apportioned to the school districts in the "Local Fund Assignment," which was generally measured in taxpaying ability as an economic index employed by the state to determine each district's share of the Local Fund Assignment.

To provide their share of the Minimum Foundation Program, to satisfy bonded indebtedness for capital expenditures, and to finance all expenditures above the state minimum, local school districts were empowered, within statutory or constitutional limits, to levy and collect ad valorem property taxes. Since additional tax levies had to be approved by a majority of the property-taxpaying voters within the individual district, these statutory and constitutional provisions required, as a practical matter, that all tax revenues be expended solely within the district in which they were collected.

In its analysis, the court used Edgewood and six other school districts wholly or partly contained within the city of San Antonio, and five additional districts located within the rural portion of San Antonio, Bexar County, which were the residence districts of part of the plaintiffs, and the approximately 1,200 districts in the state. With respect to the statewide and these specific districts, they found:

> Within this ad valorem taxation system lies the defect which plaintiffs challenge. This system assumes that the value of property within the various districts will be sufficiently equal to sustain comparable expenditures from one district to another. It makes education a function of the local property tax base. The adverse effects of this erroneous assumption have been vividly demonstrated at trial through the testimony and exhibits adduced by plaintiffs.[89]

Using the results of the survey of 110 districts throughout Texas, the court found that while the specific districts with a market value of taxable property per pupil above $100,000 enjoyed an equalized tax rate of only thirty-one cents per $100, the poorest four districts, with less than $10,000 in property per pupil, were burdened with a rate of seventy cents. Nevertheless, the low rate of the rich districts yielded $585 per pupil, while the high rate of the poor districts yielded only $60 per pupil. As might be expected, those districts most rich in property also had the highest median family income and the lowest percentage of minority pupils, while the property poor districts were poor in income and predominately minority in composition, with the top six rich districts having a 1960 median family income of $5,900 and eight percent minority pupils while the bottom four districts had $3,325 and 79 percent in these categories. Data for 1967-68 showed that the seven San Antonio school districts followed this statewide pattern. Market value of property per student varied from a low $5,429 in Edgewood, to a high of $45,095 in Alamo Heights. Accordingly, taxes as a percent of the property's market value were the highest in Edgewood and the lowest in Alamo Heights. Despite its high rate, Edgewood produced $21 per pupil from local ad valorem taxes, while the lower rate of Alamo Heights provided $307 per pupil.

In considering the state's efforts to assist the poorer districts, the court recognized that the wealth disparities were not being equalized. For example, funds provided from the combined local-state system in 1967-68 ranged from $231 per pupil in Edgewood to $543 per pupil in Alamo Heights. This resulted in a subsidy for the rich districts at the expense of the poor and that "any mild equalizing effects that state aid may have do not benefit the poorest districts."[90] Therefore, the court concluded that, for poor school districts, the Texas system was a "tax more, spend less system," and stated:

> The constitutional and statutory framework employed by the state in providing education draws distinction between groups of citizens depending upon the wealth of the district in which they live. Defendants urge this Court to find that there is a reasonable or rational relationship between these distinctions or classifications and a legitimate state purpose. . . . More than mere rationality is required, however, to maintain a state classification which affects a fundamental interest, or which is based upon wealth. Here both factors are involved.[91]

Accepting, therefore, the plaintiffs' contention that the Texas system of financing public education was a violation of their equal protection rights, the court turned to a consideration of possible remedies. The plaintiffs did not ask the court to specifically equalize expenditures for each public school pupil in Texas, but simply recommended that the court apply the principle of "fiscal neutrality." This principle would require that the quality of a pupil's education may not be a function of wealth except the wealth of the state as a whole. This approach to a remedy did not ask the court to order a particular state aid system; it only asked the court to order the state to adopt any financial plan it desired so long as the variations in wealth among school districts did not affect spending for the education of any child. Considered against the fiscal neutrality principle, the court rejected the defendants arguments as "insubstantial." These arguments were rejected by the courts stating that:

> Not only are defendants unable to demonstrate compelling state interests for their classifications based upon wealth, they fail even to establish a reasonable basis for these classifications. They urge the advantages of the present system in granting decision-making power to individual districts, and in permitting local parents to determine how much they desire to spend on their children's schooling.

> However, they lose sight of the fact that the state has, in truth and in fact, limited the choice of financing by guaranteeing that "some districts will spend low (with high taxes) while others will spend high (with low taxes)." Hence, the present system does not serve to promote one of the very interests which defendants assert.[92]

The court, in a per curiam opinion, enjoined the application of the Texas system insofar as it discriminated on the basis of wealth other than the wealth of the state as a whole and to restructure the financing system in a manner that did not violate plaintiffs' equal protection of law.

The reformers' elation with the findings in the Texas cases was short lived. On appeal in 1973, the United States Supreme Court issued its opinion in the only state school finance system case to be heard by the Supreme Court.[93] In a five-to-four decision the Supreme Court reversed the district court and found the Texas public school finance system did not violate the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution and, therefore, overturned this aspect of the prior state decisions which were based on this conclusion. This 1973 decision effectively closed one judicial avenue, the federal courts, to the reformers. The court majority, in the absence of a specific constitutional reference, concluded that education did not comprise a "fundamental interest" under the Equal Protection Clause of the Fourteenth Amendment. Thus, the State of Texas, which argued that it was providing an "adequate minimum education" for all children while preserving local choice of expenditure levels, was not obligated to demonstrate a "compelling state interest" in defense of the fiscal disparities which accompanied its school finance plan.

While fully recognizing the existence of "substantial interdistrict disparities in school expenditures. . . largely attributable to difference in the amounts of money collected through local property taxation," the court did not hold that this alone constituted a violation of equal protection requirements.[94] Basic to the court's reasoning was its statement establishing the framework for analysis. As stated by the court:

> We must decide, first, whether the Texas system of financing public education operates to the disadvantage of some suspect class or impinges upon a fundamental right explicitly or implicitly protected by the Constitution, thereby requiring strict judicial scrutiny. If so, the judgment of the District Court should be affirmed. If not, the Texas scheme must still be examined to determine whether it rationally furthers some legitimate, articulated state purpose and therefore does not constitute an invidious discrimination in violation of the Equal Protection Clause of the Fourteenth Amendment.[95]

Following this framework, the court considered the issue of "wealth discrimination" which was critical to the prior decisions establishing education as a fundamental interest which required strict judicial scrutiny. In order to find that individuals or groups constitute a class that is experiencing wealth discrimination, the court stated that they must be completely unable to pay for some benefit (education) because of their impecuniosity and, as a consequence, that they sustained an absolute deprivation of a meaningful opportunity to enjoy that benefit. Neither of these two characteristics of wealth classification, resulting in wealth discrimination, were found in the Texas public school finance system. The "poor" students and families were not necessarily clustered in the poorest property school districts. In addition, students in these districts were not being denied public education; rather, they only claimed that they were

receiving a poorer quality education than was available to students in districts with more assessable wealth. Apart from the disputed question of whether the quality of education may be determined by the amount of money expended for it, the court held that the Equal Protection Clause does not require "absolute equality or precisely equal advantages." As viewed by the court:

> Nor, indeed, in view of the infinite variables affecting the educational process, can any system assure equal quality of education except in the most relative sense. Texas asserts that the Minimum Foundation Program provides an "adequate" education for all children in the state. By providing 12 years of free public school education, and by assuring teachers, books, transportation and operating funds, the Texas Legislature has endeavored to "guarantee, for the welfare of the state as a whole, that all people shall have at least an adequate program of education. This is what is meant by 'a Minimum Foundation Program of Education.'" The state repeatedly asserted in its briefs in this court that it has fulfilled this desire and that it now assures "every child in every school district an adequate education." No proof was offered at trial persuasively discrediting or refuting the state's assertion.[96]

Having thus concluded that the Texas system did not operate to the peculiar disadvantage of any suspect class, the court turned to the question of education as a fundamental interest and subject to the Equal Protection guarantees of the Fourteenth Amendment. As phrased by the court:

> It is not the province of this court to create substantive constitutional rights in the name of guaranteeing equal protection of the laws. Thus the key to discovering whether education is "fundamental" is not to be found in comparisons of the relative societal significance of education. . . Rather, the answer lies in assessing whether there is a right to education explicitly or implicitly guaranteed by the Constitution.[97]

Education, not being among the rights explicitly protected by the Federal Constitution, was not viewed by the court as being implicitly protected. Although education was recognized as indisputably important, the court concluded that it should not, "by judicial intrusion into otherwise legitimate state activities," raise education to the constitutional level. As found by the court:

> Even if it were conceded that some identifiable quantum of education is. . . constitutionally protected. . . we have no indication that the present levels of educational expenditure in Texas provide an education that falls short. Whatever merit appellees' argument might have if a state's financing system occasioned an absolute denial of educational opportunities to any of its children, that argument provides no basis for finding an interference with fundamental rights where only relative differences in spending levels are involved and whereas is true in the present case--no charge fairly could be made that the system fails to provide each child with an opportunity to acquire the basic minimal skills necessary for the enjoyment of the rights of speech and of full participation in the political process.[98]

In declining the opportunity to recognize education as a fundamental interest, the court effectively denied the claim that the standard of strict judicial scrutiny was applicable in this case. With respect to the challenged Texas system, the court recognized that:

> Every step leading to the establishment of the system Texas utilizes today--including the decisions permitting localities to tax and expend locally, and creating and continuously expanding state aid--was implemented in a effort to extend public education and to improve its quality. Of course, every reform that benefits some more than others may be criticized to what it fails to accomplish. But we think it plain that, in substance, the thrust of the Texas system is affirmative and reformatory and, therefore, should be scrutinized under judicial principles sensitive to the nature of the state's efforts and to the rights reserved to the states under the Constitution.[99] (Emphasis in original.)

The court went even further in specifying that its decision did not rest solely on rejecting the application of the strict scrutiny test rather than the rational relationship test. Since the wealth discrimination claim, if it were to be upheld, would have put the court in the position of determining not only the manner in which the State of Texas chose to raise and to distribute state and local revenues, but also to "condemn the state's judgment in conferring on political subdivision (school districts) the power to tax local property to supply revenues for local interests," the court would be intruding in areas that traditionally were the domain of state legislatures.[100]

The court also recognized that overturning the Texas system would be an unwarranted intrusion into the state's established relationships between its state board of education and local district school boards in terms of their respective degrees of control and responsibilities for public education. As viewed by the court, in such circumstances the judiciary is "well advised" to refrain from imposing on the state's inflexible constitutional restraints which could circumscribe or handicap this relationship. Having so concluded, the court determined that the Texas school finance system did bear a rational relationship to a legitimate state purpose. The Texas system was viewed as being responsive to at least two forces: it permitted and encouraged a large measure of participation in and control of each district's schools at the local level while, at the same time, it assured at least a basic education for every public school student in the state. This system offered an opportunity, at the local level, for participation in the decision-making process that determined how locally raised funds would be spent. Each district was also largely free to tailor local programs to meet local needs.

The plaintiffs, while not questioning the propriety of Texas' approach to local control of education, attacked the system in part because, in their view, it did not provide the same level of local control and fiscal flexibility in all districts. While recognizing that the reliance on local property taxation for school revenues did in fact provide less freedom of choice with respect to expenditures in property poor school districts, the court found that the existence of "some inequality" in the manner in which the state promoted local control was not sufficient cause to strike down the entire system. As stated by the court, the system would not be "condemned simply because it imperfectly effectuates the state's goals."[101]

As a final argument, the plaintiffs claimed the Texas system was "unconstitutionally arbitrary" because it allowed the availability of local district taxable resources to depend on "happenstance," or the fortunate positioning of school district boundary lines in relation to valu-

able commercial and industrial property. In also rejecting this argument, the court found that any scheme of local taxation required the "establishment of jurisdictional boundaries that are inevitably arbitrary."[102] Some districts would inevitably contain more taxable property than others. This circumstance, however, was not considered "static" since the taxable wealth of any school district may change, and some of these changes may be brought about at the local level such as actions encouraging commercial and industrial enterprises to locate within a particular district. As summarized by the court: "It has simply never been within the constitutional prerogative of this court to nullify statewide measures for financing public services merely because the burdens or benefits thereof fall unevenly depending upon the relative wealth of the political subdivision in which citizens live."[103]

As further stated by the court:

> In sum, to the extent that the Texas system of school finance results in unequal expenditures between children who happen to reside in different districts, we cannot say that such disparities are the product of a system that is so irrational as to be invidiously discriminatory. Texas has acknowledged its shortcomings and has persistently endeavored--not without some success--to ameliorate the differences in levels of expenditures without sacrificing the benefits of local participation. The Texas plan is not the result of hurried, ill-conceived legislation. It certainly is not the product of purposeful discrimination against any group or class. On the contrary, it is rooted in decades of experience in Texas and elsewhere, and in major part is the product of responsible studies by qualified people. In giving substance to the presumption of validity to which the Texas system is entitled, it is important to remember that at every stage of its development it has constituted a "rough accommodation" of interests in an effort to arrive at practical and workable solutions. One also must remember that the system here challenged is not peculiar to Texas or to any other state. In its essential characteristics the Texas plan for financing public education reflects what many educators for a half century have thought was an enlightened approach to a problem for which there is no perfect solution. We are unwilling to assume for ourselves a level of wisdom superior to that of legislators, scholars, and educational authorities in 49 states, especially where the alternatives proposed are only recently conceived and nowhere yet tested. The constitutional standard under the Equal Protection Clause is whether the challenged state action rationally furthers legitimate state purpose or interest. We hold that the Texas plan abundantly satisfies this standard.[104]

In its final comment in this decision, the Supreme Court effectively "closed-the-door" to Fourteenth Amendment based challenges in federal courts for school finance reformers by the following statement:

> The consideration and initiation of fundamental reforms with respect to state taxation and education are matters reserved for the legislative processes of the various states, and we do no violence to the values of federalism and separation of powers by staying our hand. We hardly need add that this court's action today is not to be viewed as placing its judicial imprimatur on the status quo. The need is apparent for reform in tax systems which may well have relied too long and too heavily on the local property tax. And certainly innovative new thinking as to public education, its methods and its funding, is necessary to assure both a higher level of quality and greater uniformity of opportunity. These matters merit the continued

> attention of he scholars who already have contributed much by their challenges. But the ultimate solutions must come from the lawmakers and from the democratic pressures of those who elect them.[105]

The four dissenting Supreme Court justices generally supported the concept of education as a "fundamental interest" and the unconstitutionality of the "classification of wealth." Three of the dissenters went further and said, "The Texas system is an arbitrary and discriminatory state action which clearly violated the Fourteenth Amendment." Justice Powell, in his majority opinion, stated, "The consideration and initiation of fundamental reforms with respect to state taxation and education are matters reserved for the legislative processes of the various states." Justice Marshall, also a dissenter, concluded that the majority's holding could only be seen as a retreat from the historic commitment to equality of educational opportunity and as insupportable acquiescence to a system which deprived children in their earliest years of the chance to reach their full potential as citizens.

CHAPTER V

STATE AID SYSTEMS JUDICIALLY UPHELD

Following the decision of the United States Supreme Court in Rodriguez holding that education is not a fundamental right under the Equal Protection Clause of the Fourteenth Amendment to the U.S. Constitution, the arena for judicial challenges to state public school finance systems shifted from federal to state courts. Such cases were commonly based on claims that a state's system violated some provision of a state's constitution, particularly the article specifically covering education, and/or state statutes. With many of the state court actions being originally filed prior to the Rodriguez decision, the Fourteenth Amendment based claim was part of the initial challenge but was denied or withdrawn in subsequent state court decisions. This dismissal of the Fourteenth Amendment based claim, hereafter referred to as the "Rodriguez claim," significantly narrowed the grounds available to plaintiffs seeking to eliminate the practice of basing some school district expenditures on the wealth of a school district. It did not, however, stop the efforts of school finance reform groups. In this section, state cases which upheld the school finance systems utilized at the time each case was litigated are presented. Major emphasis is placed on identifying the fundamental characteristics of each state's school finance scheme, the basis in state constitutional and/or statutory law employed by plaintiffs, what each court found with respect to equal protection claims, what school finance concepts--such as wealth discrimination, fiscal neutrality, equity, adequacy, equal educational inputs, and equal educational outcomes--were involved in each case, and the basis of each decision.

Arizona

Less than eight months after the Rodriguez decision was issued, the Supreme Court of Arizona upheld that state's school finance system.[106] The challenge in Arizona was similar to that raised in both Serrano I and Rodriguez. Plaintiffs were students and taxpayers who claimed the system of financing public schools in Arizona, which was similar to that found in California and Texas, was discriminatory because of the heavy reliance on local district wealth, that this disparity resulted in inequality in education for the students and an unequal burden on taxpayers in the poorer school districts. This situation was claimed to be a violation of the Equal Protection Clause of the Arizona and United States Constitution. Based on the 1973 Supreme Court's decision, the Rodriguez claim component was denied. With respect to the Arizona Constitution claim, the court considered it in two parts. The first contention involved the determination of whether the students in property poor school districts suffered any injury or inequality in their right to receive an education under the Arizona Constitution. Two parts of this Constitution were relevant to this question:

> The Legislature shall enact such laws as shall provide for the establishment and maintenance of a general and uniform public school system, which system shall include kindergarten schools, common schools, high schools, normal schools, industrial schools, and a university (which shall include an agricultural college, a school of mines, and such other schools as may be essential, until such time as it may be deemed advisable to establish separate State institutions of such charac-

ter.) The Legislature shall also enact such laws as shall provide for the education and care of the deaf, dumb, and blind. (Ariz. Const. art. XI, sec. 1)

The Legislature shall provide for a system of common schools by which a free school shall be established and maintained in every school district for at least six months in each year, which school shall be open to all pupils between the ages of six and twenty-one years. (Ariz. Const. art. XI, sec. 6)[107]

Adopting the reasoning of Rodriguez, the court found that these constitutional provisions did not establish education as a fundamental right of Arizona pupils between the ages of six and twenty-one years. The challenged public school finance system did provide a system that was both statewide and uniform, provided the minimum school year length as required by the constitution, and the legislature had provided for a means of establishing required courses, qualifications of teachers, textbooks to be used in public schools, qualifications of professional nonteaching personnel, and schools were available in every county of the state.

Since the system was viewed as meeting the mandates of the Arizona Constitution, i.e., uniform, free, available to all persons aged six to twenty-one, and open a minimum of six months per year, the court turned to the second contention, that the system was discriminatory because of the disparities in school district wealth. The court found that, since the constitutional mandates had been met, and since education was not a fundamental right in Arizona, the system need only be "rational, reasonable, and neither discriminatory nor capricious."[108] Again relying on the reasoning of Rodriguez concerning the unequal tax burdens and services received at local district levels, the court stated:

In a sense, we believe that the taxpayers here are in no better posture than taxpayers of various governmental functions. We are all aware that the citizens of one county shoulder a different tax burden than the citizens of another and also receive varying degrees of governmental service. The taxpayers of some municipalities have a greater tax burden than the taxpayers of others. We find no magic in the fact that the school district taxes herein complained of are greater in some districts than others.[109]

This system, therefore, was not viewed as being a violation of the Equal Protection Clause or educationally-related provisions of the Arizona Constitution and the plaintiff students and taxpayers had not suffered injury or inequality in the right to an education. This interpretation of the Arizona Constitution's education article made it possible for the system of financing public education to be upheld by the court. The wide disparity of wealth between rich and poor school districts was not seen by the court as being injurious to students in their right to an education. There was no mention of equal educational inputs or outcomes in this case.

Michigan

On December 12, 1972, the Supreme Court of Michigan held that Michigan's public school financing system, consisting of local, general ad valorem property taxes and state school aid appropriations, by relying on the wealth of local school districts as measured by the state equalized valuation (SEV) of taxable property per pupil which resulted in "substantial inequality of maintenance and support of public schools, was a denial of equal protection of the laws as

guaranteed by the Michigan Constitution."[110] In its reasoning, the court found that the "state clearly has the responsibility for financing public school education in Michigan," and that "public schools throughout the state are state schools and agencies of the state."[111] Given this reasoning, and the irrefutable facts that there were inherent inequalities in the school district property tax bases, which were similar to those found in Serrano I, resulting in unequal support for the education of Michigan public school students, and the irrefutable fact that the state school aid program did not equalize the property tax inequalities, the court concluded that equal protection requirements were violated. The foundation for this ruling was the determination that education in Michigan was a fundamental interest, and as such, the court applied the strict scrutiny test to determine if the state had a compelling state interest in operating this school finance system. Local district wealth was found to be a "suspect classification," as was adopted in Serrano I, and the state was not shown to have a compelling interest for maintaining this system of school district classification and, therefore, this system denied equal protection of law under the Michigan Constitution.

While this case was in progress, however, a wholly new and different allocation formula was enacted in Michigan and this equal protection violation decision was specifically recognized by the court as not being rendered as a judgment of the "new" system. The court stated that it would "stand ready. . .to test the new combined public school finance system."[112] In less than one year, the court was called on to do exactly that.

In Milliken v. Green II, Michigan's Governor Milliken and others requested and received the court's certification of questions concerning the constitutionality of the new public school finance system.[113] These questions asked if the Michigan school financing system denied "substantially equal educational opportunity" under the Equal Protection Clauses of the Michigan Constitution or the Fourteenth Amendment of the United States Constitution. The court held that the latter question was settled in Rodriguez and did not, therefore, consider this question.

At the extremes, the evidence showed enormous disparities in current operating and instructional expenditures among Michigan public school districts. For example, Oak Park school district spent the most per pupil ($1,427 for all current operating expenditures, including $1,100 for instructional purposes) and Freesoil and Ionia districts expended the least (Ionia, $541 for all current operating expenditures; and Freesoil, $369 for instructional purposes).

The variation in current operating expenses between the 10 highest, $1010.95, and 10 lowest districts, $717.28, ranked by state-equalized value per pupil was $293.67 per pupil and for instructional purposes between $730.87 and $537.75 for a differential of $193.12 per pupil. The variations were less pronounced between the 10 highest and 10 lowest districts having more than 6,000 pupils, i.e., districts of the size of the defendant districts (Bloomfield Hills with 9,365 students; Grosse Pointe, 13,529, and Dearborn, 20,572).

The variations between the 10 highest and 10 lowest districts having 6,000 to 9,999 pupils were $146.71 for all current operating expenses, and $108.90 for instructional purposes. The variations between the 10 highest and lowest districts having 10,000 pupils and over were $251.67 for all current operating expenses and $174.11 for instructional purposes.

The author of a legislatively-authorized, state-wide study of financing of public elementary and secondary education in Michigan and the educational opportunities available to school children, concluded that while local school districts having high revenues purchased more

programs, and to some extent had more qualified and experienced teachers, there was very little evidence that dollar expenditures, per se, were closely related to achievement. Non-school factors such as environment and family of the child seemed to be the leading determinants of achievement in school.

A state-wide comparison of composite achievement and SEV/current operating expense per pupil/instructional expense per pupil, revealed a low correlation between test scores of fourth and seventh grade students and those factors. Other data also revealed a low statistical relationship between monetary inputs and achievement output. School districts with high socio-economic status (SES) had high composite achievement. School districts with low SES had low composite achievement. The single most important factor associated with achievement was the SES of the school district. SES appeared to be a better indicator of the educational needs of a school district then SEV.

Two school districts (River Rouge and Ecorse) ranked among the highest in the state in SEV per pupil yet ranked among the lowest in the state in composite achievement. Two of the lowest SEV districts (Rock River and Mathias Township) ranked among the high districts in composite achievement.

While the court recognized that a comparison of those school districts in the upper one-third with those in the middle and bottom one-third on composite achievement indicates that, on the average, those school districts in the upper one-third on composite achievement had smaller class sizes, employ the most educated, most experienced teachers with the highest average salaries, had higher SEV and expenditures per pupil, lower drop-out rates and higher SES, the differences between the high one-third in achievement was clearly more attributable to differences in SES than to the other factors. The data indicated that:

(a) Districts scoring high had 23.5 fourth grade students for every fourth grade teacher, while low districts had 24.2--a difference of only .7 a student; in seventh grade the difference was only .4 a student.

(b) Of the fourth grade teachers with high-scoring districts, 59% had five or more years experience, while 53% had that much experience in low scoring districts. For seventh grade, the percentages were 59% and 52% respectively.

(c) Both fourth and seventh grade teachers in high scoring districts had an average of 10 years teaching experience while those in low scoring districts had an average of 9 years experience.

(d) Of the fourth grade teachers in high scoring districts, 27% earned more than $11,000 while 24% in low scoring districts earned that much. For seventh grade the percentages were 28% for high and 26% for low.

(e) High scoring districts had SEV per pupil slightly above $16,000. The same figure for low scoring districts was $14,000.

(f) The total difference of revenue between high and low scoring districts was $20 per pupil. High scoring districts spent $35 more for all operating expenses, including $25 more for instruction, then did low scoring districts.

The court recognized the similarities between the Michigan school finance system and the Texas system in Rodriguez. Both systems relied heavily on a combination of local ad valorem property taxes and state aid to finance public schools and both demonstrated disparities in property values, as taxable resources, among school districts resulting in concomitant disparities in local school tax revenue not fully alleviated by the state's contribution. School districts with less taxable local resources had to tax at higher rates than districts with more taxable resources to realize the same per pupil revenue. If they imposed the same tax rates, the lower tax resource districts would have less revenue to provide an education for their students. Even the basis of the challenge to the state school finance system was similar.

In Michigan, the challengers to the present system based their claim on the disparities among local school districts in the amount of taxable resources available for financing their schools. They did not directly challenge the right of the Michigan Legislature to create a system of local school districts with a high degree of local autonomy in school operations and financing pursuant to the Michigan Constitution. Nor did they directly challenge the choice of a locally imposed property tax as the primary method of financing education. They did attempt to focus on the variations among districts in the amount of revenue, per pupil, which was collected under the uniform tax rate by alleging that these variations in "tax burden" unconstitutionally deprive children in districts with relatively low taxable resources of educational opportunities equivalent to those available to children in districts with greater taxable resources. This was premised on the consideration that, in the poorer districts, parents and taxpayers with fewer taxable resources would have to tax themselves at a higher rate, or to expend more of a "tax burden," in order to raise a given amount of revenue. This was, they claimed, a deprivation of the equal protection of the laws. Basic to this claim was the argument that education in Michigan was a "fundamental interest" and the finance system, which was governmentally established and imposed, created "suspect classifications" based on local district wealth. As part of its denial of these claims, the Supreme Court of Michigan observed that:

> All courts agree that the function of an Equal Protection Clause is to protect against governmental discrimination. They also agree that governmental discrimination is not of itself unconstitutional. An Equal Protection Clause forbids only unreasonable discrimination or, pejoratively, invidious discrimination.
>
> There are a number of reasons why the Equal Protection Clause has not historically been thought to require that all legislation applied equally to all citizens. First, government must be able to draw reasonable distinctions among its citizens in awarding benefits and imposing burdens. Second, there is the traditional deference of courts to the Legislature's expression of the will of the people. Third, any strictly egalitarian view of the Equal Protection Clause could not be justified historically in terms of the intention of those who drafted and ratified it. Fourth, "equality" is itself such an ephemeral concept that judicial review on an abstract "equality" standard is bound to be unmanageable.
>
> The term "invidious" seems to characterize, in simplest terms, a classification scheme which appears to judges to discriminate on the basis of impermissible biases or prejudices and not on the basis of any legitimate legislative goals. Accordingly, classifications which discriminate against, for examples, members of racial or religious groups, against new residents of the state or against independent or minority party voters may be closely scrutinized to see whether they reflect a legitimate exercise of legislative decision making.[114]

The court also noted that the arguments in this case were directed to the question of whether the disparities in local taxable resources signify concomitant disparities in "educational opportunity." In addition to the lack of a concrete definition of this phrase, the court also noted that there was a lack of a fundamental agreement concerning a standard by which equal educational opportunities might be measured. As stated by this court:

> Defendant school districts have argued that educational opportunity should be evaluated in terms of "output," as measured by pupil accomplishment on certain achievement tests. The defendants have presented statistical evidence indicating that there is no significant correlation between the level of taxable resources in a given district (or the actual per pupil expenditures of the district) and the level of achievement of its students.
>
> On the other hand, opponents of the present school financing system wish to define educational opportunity in terms of "input." Just as defendants have defined output narrowly, in terms of achievement test scores, so too, opponents have defined input narrowly in terms of the district's available taxable resources.
>
> Without disagreeing with either theory of defining educational opportunity--inputs or outputs--we cannot accept without criticism either of the further-narrowed definitions offered by the parties. The reduction of the sum total output to the accomplishment tests would be grossly unjust to both the educators and the pupils, for education must extend far beyond the limits of verbal facility or mathematical proficiency. With respect to the input received by a school, the level of taxable resources within a district is only one of the myriad inputs into an educational system.
>
> The foregoing discussion serves to demonstrate the complexity of the concept of educational opportunity. We will not attempt a definition.
>
> Yet it is important in terms of the constitutional analysis to clarify the point in contention. Although lawyers and judges in this and other cases have spoken in the grand term of educational opportunity, they have been in fact discussing what concededly is only a facet of that concept--the taxable resources available to finance each child's education.
>
> Opponents of the present system do not press for a general requirement of equality of "educational opportunity" in all or even several of its dimensions. Instead, they are seeking equality as to one factor or input of the educational process--taxable resources.
>
> We are not presented with particular students or particular school districts alleging that they are receiving an inadequate education in some particular regard as a result of the present financing system.[115]

Opponents also claimed that the discrimination in the Michigan public school financing system impinged upon the fundamental right of students--a right to educational opportunity. This was founded on the Michigan Constitution, and specifically on Article 8 which provided that "the legislature shall maintain and support a system of free public elementary and secondary schools as defined by law." (Mich. Const. 1963, art. 8, sec. 2.) This provision, it was claimed,

created substantive educational rights of school children which were infringed by the state's school finance system. Also contained in the Constitution was an Equal Protection Clause and the provision of ad valorem taxation by school districts. The court, noting that such ad valorem taxation did result in disparities in taxable resources among local school districts, recognized that such wealth disparities existed at the time the people adopted the 1963 Constitution, and that the "gap in taxable resources between relatively wealthy and poor districts has narrowed progressively since the adoption of the 1963 Constitution" by the state allocating increasing amounts of money to school districts on an ascending scale inverse in ratio to the SEV per pupil in the district thus favoring school districts with relatively low SEV's.[116] This would result in a low SEV being a reduced factor in determining the number of dollars a district would have to expend for the education of its students. Therefore, with respect to the question of the Michigan Constitution being violated, the court found that the evidence did not show that the Michigan financing system substantially denied students equal educational opportunity in school districts having relatively low state equalized value per pupil. It was found that the Michigan Constitution did not prohibit a school district from levying taxes to support a level of expenditure for the education of students beyond the level of expenditure in other districts. It was also found the Michigan Constitution did not obligate the state legislature to supplement revenues of other districts that were able and willing to levy in order to raise their per pupil expenditure.

The equal protection/strict scrutiny standard was not used by this court because the court concluded that the legislation did not classify individuals on the basis of a suspect criterion nor infringe upon the exercise of a "constitutionally protected" right.

The appellants attempted to show a relationship between dollar expenditures per pupil and achievement. A statewide comparison of composite achievement and current operating expense per pupil/instructional expense per pupil revealed a low correlation between test scores of fourth and seventh grade students and between monetary inputs and achievement output. School districts with high socioeconomic status (SES) had high composite achievement. School districts with low SES had low composite achievement. The single most important factor associated with achievement based on district data was the SES of the school district. SES appeared to be a better indicator of the educational needs of a school district than state equalized assessed valuation per pupil. In addressing equal educational inputs and outcomes, the Michigan court said:

> The state's obligation to provide each child with an education can be defined either in absolute terms--an education which leaves the child with certain minimally sufficient skills--or an education which meets his educational needs, or one which is sufficient to allow him to function usefully in society.[117]

The court concluded that the evidence had not shown that eliminating disparities in expenditures would significantly improve the quality of educational services or opportunities offered to Michigan school children. It was stated that "even if part of the larger sums of money were available to hire "better" teachers, there was no reason to believe that a significant number of better teachers would accept employment in districts with low SES in preference to high SES."[118]

While Milliken v. Green II may be considered the most significant Michigan-based case challenging the state's public school finance system, it was not the last Michigan case to bear on this issue. While Milliken v. Green II was being litigated, the Michigan Legislature enacted a

statute entitled "Bursley School District Equalization Act of 1973." (M.C.L.A., sec. 338. 1101 et seq., 1974.) In part, this Act based the amount of state aid on both the number of pupils and property values in each of the state's intermediate districts as a means of equalizing state aid. The results provided substantial increases to those districts which lacked large financial bases to serve the size of their student populations. No intermediate school district was to receive less than a ten percent increase, nor more than $1.50 per pupil, in state aid in 1973-1974 over that received in 1972-1973. In an action related to this Act, a Michigan appeals court upheld the purpose of the Act as a legislative attempt to equalize the amount of state aid allocated to each intermediate district by giving substantial increases to districts which lacked large financial bases, as determined by the state equalized evaluation, to serve the size of their pupil population.[119] This decision upheld "the legislative purpose of gradually equalizing state aid while at the same time not reducing the aid to any district."[120]

Another attempt to have education declared a fundamental interest was rejected by a Michigan appeals court in a student transportation case.[121] Students claimed that their school district's failure to provide them free transportation to school amounted to a denial of a free public education, that such an education was a fundamental interest, and the court should apply the "strict scrutiny--compelling state interest" test in considering their claims.[122] Following the Rodriguez reasoning, each of these claims was rejected. The court also refused to accept the student's claim that, since some school districts provided free transportation, their district denied them equal protection by not providing the requested transportation. Since the students were not being denied an opportunity for an education, and since Michigan statutes clearly indicated that the provision of transportation was permissive rather than mandatory, no denial of equal protection existed.

The most recent case seeking to have the Michigan school finance system declared unconstitutional was decided in 1984.[123] The basic challenge brought by 20 Michigan public school districts, and one student from each district, was premised on the claim that the system was unconstitutional because it produced unequal per-student funding between districts. Plaintiffs argued that this system violated Article 8, Section 8, of the Michigan Constitution, plus the Equal Protection Clause thereof, as previously identified, since equality of financial support was denied by the existing school-aid formula.

The Michigan state-aid system challenged in this case was not exactly the same as that which was unsuccessfully challenged in Milliken v. Green II. Districts continued to rely on state aid and the assessment of ad valorem property taxes within local districts. The proceeds of the local taxes also varied according to the locally-determined tax rate and the value of the taxable property within a district. The state-aid formula attacked in this action was intended to ameliorate the differences in property tax revenues among school districts by providing an incentive to districts to maximum local self-taxation. Some school districts had so valuable a tax base as to be "out-of-formula"; i.e., local property tax revenues supplied their entire financing and they received no state-aid. Many districts, however, had such a low tax base that they were unable, assuming that they levied the maximum local tax rate, to generate as much money per pupil as the "out-of-formula" districts even after receipt of state assistance. This new system, however, produced less disparity in funding than did the system previously upheld in Milliken v. Green II.

Plaintiffs in this case sought to have the new system declared constitutionally infirmed since it did not produce an equality of funding per student in each and every school district within the state. There was no allegation that any pupil was being deprived of an opportunity

for a free public education, or of an adequate opportunity for education, or that any school district failed to provide its students with an adequate education as measured by any standard.

Following the reasoning of Milliken v. Green II in upholding the previous system, the Court of Appeals at Michigan also upheld the new system. Education was not viewed as a fundamental right under Michigan's Constitution, the state's obligation to provide a system of public school was not viewed as being synonymous with the claimed obligation to provide equality of educational financial support, and the new Michigan state-aid system did not deny the plaintiff students due process of law under the Michigan Constitution.

One additional aspect of this 1984 decision bears mention. The plaintiffs in this action consisted of specific school districts and students in these districts. While the court recognized that the student plaintiffs had legal standing to bring suit against the Michigan public school finance system, the plaintiff school districts did not have legal status to bring suit against the state in this case. As viewed by the court, the school district plaintiffs were not seeking to enforce any rights which had been conferred upon them. They were attempting to overturn the legislatively enacted scheme for financing public education and, therefore, to compel the Michigan Legislature to enact a different system that would conform to their theories of fiscal equality. As stated by the court:

> They [school districts] have no power to do so. School districts and other municipal corporations are creations of the state. Except as provided by the state, they have no existence, no functions, no rights and no powers. They are given no power, nor can any be implied, to defy their creator over the terms of their existence. They surely have no power to bring suits of such nature on behalf of residents within their boundaries, or to expend public funds to finance such litigation of, or on behalf of, private citizens.[124]

From this perspective, private citizens such as parents of students and/or taxpayers in a school district may bring suit challenging the state system of public school finance but school district may neither bring such suits nor spend public funds to finance such suits.

Montana

In a proceeding originally brought by the Attorney General and the Montana Department of Revenue challenging the constitutionality of a county tax on property, the Supreme Court of Montana had the opportunity to also consider the constitutionality of that state's system for funding public education.[125] Fundamentally, this case challenged one part of the tax system which required each county to levy a basic 40-mill tax, for both primary and secondary schools, on property in each county and, if the funds thus raised exceeded the amount needed to fund the "foundation program" for public schools in the county, the excess was to be remitted to the state for deposit in the "earmarked revenue fund, state equalization aid account."[126] This "surplus" was to be used in combination with other funds to fully fund the "foundation program" in those counties not fully funded by their basic levy.

Montana tax law also authorized the adoption of budgets in excess of the minimum required by the foundation program and provided that if this budget could not be fully funded by the imposition of specified additional county tax levies, the director of the Department of Revenue was to impose a statewide property tax at a millage rate sufficient to fully fund the

deficiencies in the various school districts. In 1973, the Department of Revenue, under this authorization, ordered all counties to impose an additional 12 mill levy. Several counties brought legal action against this additional levy and claimed, in relevant part, that they were being required to "remit substantial sums to the state for the support of school districts located in other counties" inasmuch as this action would "require 39 counties to remit taxes which will be distributed to 17 counties."[127] The counties based their claim on an alleged violation of the 1972 Montana Constitution. Under Article X, Section 1, the legislature was required to fully fund the public schools. The complaining counties alleged that the tax levied discriminated against the taxpayers of some counties by requiring them to pay more than was required for the support of their local schools.

Against this background, the court first considered the constitutional requirement that the legislature fully fund the basic educational system. As determined by the court, this mandate required the legislature to fully fund the state's share of the cost of basic education, but did not specify the means by which the legislature must achieve this purpose. It was not, therefore, unconstitutional for the legislature to employ a statewide property tax. Once this adoption of a statewide property tax was achieved, the legislature was "free to use the proceeds realized by the tax for any public purpose, including fulfillment of the duty to fund public education."[128] The legislated requirement of imposing an additional 12 mill levy in all counties, with the redistribution of this revenue to the 17 counties that did not fully fund their foundation program, was not an unconstitutional action by the Montana Legislature or Department of Revenue. In other words, the "excess" of foundation program funds from one county could be used to offset foundation program "shortfalls" in other counties with lesser property tax generated revenue.

Idaho

In 1975, the Idaho Supreme Court was asked to determine the constitutionality of that state's public elementary and secondary school financing system.[129] The challenge was brought by as a class action by residents, property owners, and taxpayers within Pocatello School District No. 25. The plaintiffs, Thompson et al, claimed to also represent all children in the State of Idaho who were attending the public schools in the state, with the exception of those children in that school district, whose identity was not known, which afforded its students the greatest educational opportunity of all school districts within Idaho. The defendants included Engelking, State Superintendent of Public Instruction, the members of the State Board of Education and other elected public officials. The complaint sought a judgment that the plaintiffs had been denied equal protection of the laws of the United States and of the State of Idaho and that the school finance system was, therefore, void and "without force or effect." They requested that the court order a reallocation of the funds available for the support of the public schools and that the court retain jurisdiction and provide a "reasonable" amount of time for the reallocation of those funds or otherwise restructure the school finance system in order to provide "substantially equal educational opportunities" for all children of the state.

The equal protection claim based on the Fourteenth Amendment Rodriguez decision of the Supreme Court was denied. The Idaho trial court did find, however, that the school finance system violated Article 9, Section 1, of the Idaho Constitution which stated:

> The stability of a republican form of government depending mainly upon the intelligence of the people, it shall be the duty of the legislature of Idaho, to establish and maintain a general uniform and thorough system of public, free common schools.

As viewed by the trial court, this constitutional mandate required the state "to establish and maintain a general, uniform and thorough system of public schools" and, therefore, the requirement included that the "system provide an equal educational opportunity to all children attending the public schools in the state."[130] The trial court concluded that the system, which had a heavy reliance on an ad valorem property tax, failed to provide such opportunity. This court also concluded that there was a "significant connection between the sums expended for education and the quality of educational opportunity," and, therefore, the resulting disparity of per pupil expenditure by property poor school districts did not meet the constitutional mandate of "complete equal educational opportunity."[131]

In the Idaho Supreme Court, a divided court reversed the trial court's findings. In its analysis of the Idaho public school finance system, this court recognized that school funds were derived from five basic funds. During the 1970-71 school year, these funds accounted for the following percentages of total school revenue: state funds (36%); county property tax (7%); local school district property tax (40%); federal funds (11%); miscellaneous sources of funds such as activity fees and lunch programs (6%). The local school districts raised 40% of the funds through ad valorem taxes on property within their district through six separate levies. Primarily, the educational funds from the state were distributed through a "Foundation Program" which was, essentially, a formula established by the legislature to distribute available funds in an attempt to equalize the amount of money available per pupil, computed on an average daily attendance (ADA) basis, in the state's 115 school districts, and contained three distribution components of the Foundation Education Program, the Foundation Transportation Program, and the Foundation Exceptional Program. The formula under which these funds were distributed to the school districts may be summarized as follows: the total weighted average daily attendance, which gave secondary school a 1.3 weighting and included sparsity and exceptional children weightings, was multiplied by the state's average cost per pupil; this was subtracted from the product obtained by multiplying the adjusted assessed valuation of the district by 22 mills; to this sum was added the district allowance for the Foundation Exceptional Educational Program (80% of the cost of personnel hired to work with children who required special education and services); and to this sum was added the Foundation Transportation Program allowance which was designed to pay part of pupil transportation costs by paying 90% of the difference of the approved transportation costs of the district less the amount one mill would raise when applied to the adjusted value of the taxable property in a district. As contained in this formula, adjusted assessed valuation of a property was not based on the full market value of property, but on an arbitrary percentage of that value called the "assessed valuation." The percentage of market value at which property was assessed, the assessment ratio, varied in 1970-71 from 13.4 to 20 in different counties. Because of this variation, an Adjusted Assessed Valuation was used by the state in calculating the Foundation Formula. The State Tax Commission determined the state average assessment ratio of a county. This factor was then multiplied by that county's assessed valuation in order to determine the Adjusted Assessed Valuation. For example, if the state average assessment ratio was 15% and a county used a 10% ratio, the county's assessed valuation would be multiplied by 15/10, or 1.5, to obtain the Adjusted Assessed Valuation. The final effect of the Foundation Program was a 22 mill level of taxation that was equalized among the districts. When the mill levy of the districts was combined with the state funds, each district had available essentially the same base of funds

per ADA. To raise the additional funds deemed necessary, the locally elected trustees of the individual school districts would levy taxes against the taxable property within the district. Because of the variation in the assessed valuation per pupil in the Idaho school districts, the amount which the individual districts could raise with each mill levied varied greatly. In summary, the overall scheme of funding the public schools was in part dependent upon the school district ad valorem property tax. Because of the differences in the assessed valuations of the districts, the amounts raised and spent per pupil varied among the several districts. The trial court found this circumstance to be violative of Article 9, Section 1, of the Idaho Constitution.

In its opinion, the Idaho Supreme Court reversed the determination of the trail court. As stated by the majority:

> We reject the arguments advanced by the plaintiff-respondents and the conclusions made by the trial court. To do otherwise would be an unwise and unwarranted entry into the controversial area of public school financing, whereby this court would convene as a "super-legislature," legislating in a turbulent field of social, economic and political policy. We are especially cognizant that the facts and socio-economic conclusions which respondents presented to the trial court are controversial, sketchy and incomplete. In light of the issues as framed in this appeal, we hold that the present system of financing public education in the State of Idaho does not deny equal protection of the laws as guaranteed by the federal or state constitutions, nor does it violate the mandate of the education article of our state constitution.[132]

With specific reference to the argument that because unequal amounts were expended per pupil in Idaho school districts, and that those students in low or median expenditures per pupil districts were deprived of equal educational opportunity when compared to students in school districts having high expenditure levels per student, the court concluded that this did not cause the former pupils to be denied equal protection of the laws, or to be denied a "fundamental right" to be educated under the Idaho Constitution. Simply stated, the trial court opinion rested on the conclusion that money was "the basic and overriding criterion for adequate education" as was the thesis of Serrano I. Because of this "fundamental right," an infringement by the state in its school finance scheme could only be upheld if the state could demonstrate a "compelling state interest" under the Idaho Constitution in continuing the infringement. While the Idaho Supreme Court agreed that funds must be supplied to provide for teachers, supportive staff, physical facilities, texts, supplies, transportation, and a myriad of other necessities, it could not determine what exactly was "basic education," what was necessary to a "basic education," and what was "equal educational opportunities." Even assuming that the Idaho Constitution required public school students to receive equal educational opportunities, the court stated that it could not adopt the trial court's conclusion that, unless a substantially equal amount of funds are expended per pupil throughout the state, subject only to "natural variances" such as sparsity of population, students in those districts receiving less than that district with the greatest expenditure per pupil were being denied equal educational opportunities. As stated by the court majority:

> Because of . . .[the] ongoing argument as to the relationship of funds expended per pupil (above a minimum level needed for proper facilities, etc.) to the quality of educational opportunity, we refuse to venture into the realm of social policy under

the guise of equal protection of the laws or fundamental right to education. The courts are ill-suited to a task which is the province of the legislature.[133]

Turning to the two-tiered "strict scrutiny - compelling state interest" test adopted by the Supreme Court in Rodriguez, the Idaho Supreme Court considered the question of education as a "substantive fundamental right" under equal protection and Article 9, Section 1, of the Idaho Constitution. With respect to the Idaho Equal Protection Clause, the court found that this clause forbids state discrimination which reflects no rational policy, but which is simply arbitrary and capricious action. The court, therefore, stated that this case was "an inappropriate occasion to adopt for use by this court interpreting the Idaho Equal Protection Clause, the two-tiered strict-scrutiny test used by the United States Supreme Court to initially scrutinize Rodriguez . . ."[134] The court reasoned that, since this case dealt solely with an equal protection challenge to the statutory financing scheme under the Idaho Constitution, it would not adopt the "strict scrutiny" test but would apply the "rational basis" test. Under the latter, the court concluded that the Idaho Legislature, acting in its plenary capacity to establish and maintain a system of public education, acted rationally and without constitutional discrimination in establishing a system of school finance wherein a large portion of revenues are levied and raised by and for the local school districts. This was viewed, in part, as a method for maintaining the control and management of public schools in the hands of the parents and taxpayers in local control of local school districts. The court went on to find that Article 9, Section 1, of the Idaho Constitution did not guarantee to children the right to be educated in such a manner that all services and facilities would be equal throughout the state. As expressed by the court:

> Stated simply, Art. 9, Sec.1, is a mandate to the State through the Legislature to set up a complete and uniform system of public education for Idaho elementary and secondary school students. Art. 9, Sec. 1, reads: "[I]t shall be the duty of the legislature of Idaho, to establish and maintain a general, uniform and thorough system of public, free common schools." (Emphasis in original.) On its face, this section mandates action by the Legislature. It does not establish education as a basic fundamental right. Nor, does it dictate a central state system of equal expenditures per student.[135]

The trend in Idaho was to attempt to equalize wealth disparities between school districts. The State changed its school finance scheme to include equalization funds and the adjustment of general county levies as an attempt to "more nearly equalize the disparity that existed between the districts in per pupil expenditures."[136] This legislative attempt did not, however, create a "fundamental right" under Article 9, Section 1. As determined by the court, ". . . the Legislature is obligated to establish a statewide system of financing so that each school district receives sufficient funds" not that equal sums are expended per student throughout the state.[137]

In summary, the Idaho Supreme Court overturned the trial court's decision and upheld the state school finance system with its reliance upon each district's ad valorem property tax, differences in assessed valuation, and amounts raised and expended per pupil by stating:

> . . . we refuse to overturn the present system used in this state to finance public education. Neither equal protection, nor Art. 9, Sec. 1, of the Idaho Constitution, require that the public schools be financed so that equal amounts are expended per pupil, subject only to such variables as geographic or demographic location. . . The record does not demonstrate a failure by the Legislature to comply with its

mandate to establish a system of basic, thorough and uniform education; nor, does that record demonstrate an inadequacy of funding to maintain that system of education.[138]

Two justices dissented in this case. In the dissent, they chided the majority for failing to set out a standard or test by which compliance with the state constitution could be measured and asked, but did not offer solutions to, the following questions:

1. By what standard is the present or any future system of financing education to be judged?

2. How may the legislature determine if a proposed new financing system is offensive to the constitution without a standard?

They further concluded that the Idaho system of public finance should be tested using strict scrutiny standards which would find the system unconstitutional.

It should be recognized that the concepts of equal educational input and equal educational outcomes were not mentioned in this case. The interpretation of the language of the education article and state constitution was given using the "rational" basis of the equal protection clause.

Oregon

The Oregon system of financing public schools was challenged by a group of plaintiffs (Olsen, et al.) alleging that the system violated the State Constitution's Equal Protection Clause.[139] Olsen claimed the system violated the Constitutional requirement that the Legislature must provide for a "uniform and general system" of schools. Under the Oregon system, however, the amount of money available for education depended upon the value of property located in individual school districts. Such property-based wealth varied greatly and the variations in wealth resulted in unequal educational opportunities for the children of the State. Olsen alleged that the funding system did not establish a uniform system of schools that provided a minimum educational opportunity that was required by the Oregon Constitution since the system "lessened the local fiscal control in some districts because of the disparity in value of the property in the district."[140]

The Oregon school finance system was based on a combination of local school district, county, state and federal government sources of revenue. In 1972-73, the funding year used as evidence in this case, Oregon spent $603 million dollars on public elementary and secondary schools with local school districts and counties providing 78 percent, the state providing 16 percent, and federal funds providing 4 percent of the total revenue. Local sources were largely provided from property taxes and state funding was largely derived from an income tax. Basically, Oregon had three kinds of school districts: unified, providing education from grade one through twelve; elementary, providing education from grade one through six or eight; and high school, providing education from grade seven or nine through twelve. In comparable districts the difference in true cash value per pupil between districts was substantial. For example, in unified districts, those educating grades one through twelve, the wealthiest district had a true cash value per pupil of $203,000, while the poorest had a true cash value per pupil of $19,000.

Likewise, the expenditure per district varied substantially. For example, in unified districts, the expenditures varied from $1,795 to $674 spent per pupil.

The amount of tax a property owner paid per $1,000 value of property likewise varied between districts. Comparing some selected districts, the rate varied from $20 per thousand to $9 per thousand. The rate per thousand was generally higher in those districts having less property value per pupil. However, this was not necessarily so; some districts having more wealth per pupil taxed themselves for education at a higher rate per thousand than districts with less wealth per pupil. The ratio between wealth and tax also substantially varied; that is, districts with, for example, three times as much wealth per pupil had a tax rate greater than, about the same as, or, in the extreme instance, one-half as large as other districts with less wealth per pupil.

As stated, in 1972-1973 the state supplied 16 per cent of the funds for public school education. In 1972-73 that amounted to 111 million dollars. Most of these funds were distributed as Basic School Support. Most of this support was distributed on the basis of flat grants; that is, so much money per pupil to each district. In 1972-1973 flat grants were in the amount of 79 million dollars. About 15 million was used for equalization. The remaining sums were used for paying for district transportation and miscellaneous purposes. These equalization funds were distributed in inverse order of the taxable wealth in the districts.

Under the Oregon system, the state fixed a "minimum acceptable level of school support" which was a minimum amount per pupil the state determined annually that must be spent for educational purposes. For example, in 1971-1972 the state determined that every district had to spend, from all sources, $593 per pupil to maintain a satisfactory level of educational opportunity.

Every year the state also set the minimum tax rate which districts must levy in order to be eligible to receive equalization funds. For example, in 1971-1972 the state required districts to levy up to $13.24 per $1,000 value. This was not completely accurate as a district with high values per pupil did not have to set the levy at this rate in order to contribute the amount the states set as the "minimum acceptable level of school support."

Equalization funds were distributed by the state as follows, using 1971-1972 as an example: $593 per pupil was set as the minimum to be expended by each district. To raise this amount each district was given a flat grant of $148 per pupil. Each district was required to tax the property in its district up to the rate of $13.24 per $1,000. If a levy at this rate did not raise the balance to achieve $593 per pupil, the state paid the district from the equalization funds sufficient sums to enable the district to meet the $593 minimum.

Another device created by the Oregon system used to equalize the monies available for school districts was the "intermediate education district" (IED) which were generally districts formed according to county boundary lines. One of the primary purposes of an IED was to equalize the funds available to the various districts within the IED and yet have the districts retain optimum local control. Equalization by this procedure had not succeeded. Voters in the IEDs had voted down taxing levies for equalization. The common belief was that the voters in the wealthier districts would not tax themselves to aid the poorer districts.

Several Oregon counties receive substantial sums from the federal government because of timber lands known as "Oregon and California Lands" located in these counties. Twenty-five

per cent of these funds were transferred to the county school funds in these counties. These funds were not taken into account in determining which districts were entitled to equalization funds and the amount of equalization required.

Another complicating factor in the Oregon school financing system was the timber severance tax. Timber in eastern Oregon was not subject to an ad valorem tax. On harvesting, owners of eastern Oregon timber paid a severance tax. In western Oregon timber was assessed an ad valorem tax; only upon 30 per cent of the value of the timber, however, the owners pay a severance tax on 70 per cent of the value of the harvest of the timber. In eastern Oregon timber was not included in determining the value of the taxable property in the school district. In western Oregon only 30 percent of the value was included. Private timber holdings were scattered throughout Oregon with some districts having none and others having substantial private timber holdings.

Recognizing that the United States Supreme Court found in Rodriguez that the Texas school finance system was not contrary to the Equal Protection Clause of the Fourteenth Amendment, the Oregon Supreme Court concluded that Rodriguez was not necessarily controlling in this case. The court concluded that the Equal Protection Clause of the Oregon Constitution could be interpreted in a broader manner than the Federal Constitution. From this perspective, the court considered plaintiffs' contention that education, under the Oregon Constitution, was a "fundamental right" and, therefore, the classification of school districts based on property wealth was subject to a "strict scrutiny" analysis because it impinged upon a fundamental right.

In rejecting Olsen's fundamental rights argument, the court stated that "this approach of categorizing an interest as a fundamental or nonfundamental interest and deciding this issue upon the basis of whether the interest is explicitly or implicitly guaranteed by the (Oregon) Constitution, is not a helpful method of analysis."[141] The court, therefore, adopted the approach of a "balancing test" where the court would weigh "the detriment to the education of the children of certain districts against the ostensible justification for the scheme of school financing."[142] Therefore, the court sought to determine if the detriment to students was much greater than the state's justification and, if it was, did this amount to a finance scheme which violated the guarantee of equal protection. As stated by the court: "How important is the interest impinged upon,--educational opportunity, as balanced against the state objective in maintaining the present system of school financing,--local control?"[143]

The court first evaluated the "interest impinged upon,--educational opportunity" and found that the present system did not totally deprive the children of the poorest school district, meaning the lowest value of property per pupil, of an education or of the use of some of the tools and programs believed to enhance education such as books, shop equipment and gymnasiums. Since the Oregon Legislature had not expressly stated any objective to be attained by the school finance system, the defendants in this case argued that the objective of this system was local control of schools; that is, control by the voters of the district through an elected school board. This control was exerted by determining the amount of money which should be raised for schools and how the money should be spent. The plaintiffs, while conceding that local fiscal control was a worthwhile objective, argued that the present system actually diminished local control for the poorer districts; that is, they could not raise sufficient money to give them any options; the poorer districts had to spend all of their funds to fulfill state requirements. While accepting the argument that the poorer districts did not have as much fiscal control as the wealthier districts, the court concluded that the poorer districts still held

local fiscal control and, because some districts had less local control than others because of the proven disparity in the values of district property, this disparity did not lead to the conclusion that equal protection rights had been violated under this school finance system. The court also recognized that the possible ramification of Olsen's contention that local control was not furthered by this heavy reliance on locally raised taxes would logically reach far beyond the function of providing educational opportunity. As specified by the court:

> In Oregon, as well as most states, local government has raised funds locally to furnish services that are provided by local government. Examples of such service are police and fire protection, streets and certain utilities. At least some of these services must be placed in the "important" category. If the state's primary reliance on local taxes to fund education is unconstitutional, its primary reliance on local taxes to fund some of these other services would seem to be equally violative of the Equal Protection Clause. Yet this tradition of local government providing services paid for by local taxes existed at the time of statehood and continues to be a basic accepted principle of Oregon government.[144]

In addition, the court found that because alternative systems of financing education would reduce or eliminate some of the inequalities in the present system and still retain and possibly enhance local control, this was not sufficient to render the present system invalid.

Turning to the argument that the Oregon Constitution required a "uniform" system of public schools, and that this requirement indicated that the amounts available for providing educational opportunities in every school district must approach equality, the court concluded the requirement of "uniform" is complied with if the state requires and provides for a minimum of educational opportunities in the district and permits the district to exercise local control over what they desire, and can furnish, over the minimum.

The Oregon court, having concluded that the local wealth disparities of the school finance system did not violate equal protection guarantees, did not violate the "uniform" mandate, and was not an appropriate case for applying a strict scrutiny analysis, concluded by stating:

> In determining equal protection challenges made on the ground that variation in wealth of school districts result in unequal educational opportunities, the court would weigh the detriment to the education of children of certain districts against the ostensible justification for the scheme of school financing. The fact that some districts had less control than others because of the disparity in the value of property in the district did not lead to the conclusion that the equal rights clause had been violated. The financing system was not invalid on grounds that there were alternative systems of financing education which would eliminate some of the inequalities. The state aid financing system did not violate the constitutional provision that the legislative assembly shall provide by law the establishment of a uniform and general system of common schools. . . .
>
> We hold that the Oregon System of school financing does not violate the Oregon Constitution. Our decision should not be interpreted to mean that we are of the opinion that the Oregon system of school financing is politically or educationally desirable. Our only role is to pass upon its constitutionality.[145]

Pennsylvania

In a class action brought by parents residing in, and having children attending, the School District of Philadelphia, the Pennsylvania school finance system was challenged as violating the State Constitution's Equal Protection Clause and the clause requiring the state to provide a thorough and efficient system of public education.[146] This claim was based on the factual situation of the Philadelphia district having exhausted its power to raise revenue, its estimated expenditures exceeded estimated revenues by $158,537,299, and this deficit condition required "wholesale cutbacks" in educational programs. These cutbacks included the elimination of all kindergarten classes, athletic programs, extracurricular programs, all art and music programs, the elimination of all librarians and library programs, all breakfast and lunch programs and services, all counseling services, all busing except for special education students, and the elimination of approximately 536 teachers of reading. These measures were claimed to be reductions which would compromise the educational opportunity of Philadelphia's school children compared with the educational opportunity of other children throughout the state. The sole substantive issue presented by the plaintiffs was based on the constitutionality of the current legislatively prescribed method of financing Pennsylvania's public schools.

The Pennsylvania school finance system challenged in this case involved three major elements: student enrollment; district spending per student; and the district's relative wealth. Districts received a payment for each child enrolled in school. Secondary children were "weighted" so that the weighted average daily membership (WADM) exceeded actual enrollment. The Commonwealth then paid a percentage of the median actual instruction expense per WADM in the year for which reimbursement was to be payable. This "aid ratio" was computed by dividing the market value of the district's real estate by WADM and comparing it to the state average tax base per student.

If the district and State tax base were equal, the district received fifty (50%) percent of student cost. If the district base was lower, support was higher; if the base was higher, support was lower.

To assure the availability of uniform valuation statewide a State Tax Equalization Board was formed and given the task of determining the market value of taxable real property in each school district. These market values were the standard by which district wealth was measured in the equalization formula. Two significant additions had been made to the subsidy formula. A school district's personal income was valued per WADM and comprised forty (40%) percent of the aid ratio. Second, a school district's tax effort was measured in determining the "base earned for reimbursement." The more that effort sank below the median statewide effort the more the figure to which the aid ratio was applied decreased. Each school district was then paid by the Commonwealth for instruction of the district's pupils an amount determined by multiplying the market value/income aid ratio times the actual instruction expense per WADM or by the base earned for reimbursement, whichever was less, and by the WADM for the district.

Districts received, in addition, a dollar payment for each poverty-level or welfare student. "Density" and "sparsity" payments were available for districts with high or low population per square mile. These major payments for instruction were in turn supplemented by state participation in defraying the cost of the services incidental to that instruction; i.e., transportation, health, drivers education, and technical and special education.

The Commonwealth Court of Pennsylvania, in considering the claims levied against this system, recognized that the current system was intended to be a step in continuing legislative attempts to correlate the state aid formulae with local districts' needs and fiscal capacities. The use of percentage equalization grants, as well as poverty, density and sparsity payments were instituted in 1966. As an additional step, in 1977 local tax efforts were weighed and the income tax base was included in computing the state aid ratio. As viewed by the court:

> The goal is to equalize educational opportunity and remove that opportunity for dependence upon the student's situs or status. Whether the proper nexus has been maintained between the elements of the subsidy formula and the professed goal has been a source of criticism. We cannot help but take cognizance of the financial plight of our urban school districts generally, and Philadelphia in particular. The question, however, is not whether more dollars are needed. . . this is conceded. Rather, the question is whether the criteria incorporated into the State aid formula are so unrelated to the cost of maintaining a thorough and efficient public school system. . . as to rise to the level of an unconstitutional deprivation.[147]

With respect to the constitutionality of Pennsylvania's school aid subsidy formula, this court adopted the "rational relationship" test by stating that, while special laws are prohibited, the Legislature may create statutory classifications and all that is required is that a "classification must have some rational relationship to a proper state purpose."[148] This view did not attempt to deal with education as a "fundamental interest" under the Pennsylvania Constitution, but on the question of the General Assembly having created a reasonable classification in pursuit of a rational state purpose. The court also specifically stated ". . . in considering laws relating to the public school system, courts will not inquire into the reason, wisdom, or expediency of the legislative policy with regard to education, but whether the legislation has a reasonable relationship to a thorough and efficient system of public schools."[149] From this perspective the court concluded that:

> They (plaintiffs) contend that the subsidy formula "classifies" them disadvantageously by depriving them of enough dollars to supply the services they claim are available elsewhere throughout the State. The purpose of the School Code is to establish a thorough and efficient system of public education, and every child has a right thereto. To the extent that the Philadelphia School District receives a significant State subsidy that helps local government administer its delegated responsibilities, the School Code bears a rational relation to its avowed purpose. No portion of the subsidy formula has been attacked as compromising that goal with regard to Philadelphia's school children. No indicia have been pointed to which entail any characteristics inherent in these school children and discriminate against them accordingly. Nowhere is it asserted that Philadelphia receives less funds, either in gross or per student, than any other school district.
>
> Although all educational financing cases are sui generis in the sense that the alleged deprivation is relative rather than absolute, we find no discrimination, invidious or otherwise, in a system that applies a uniform subsidy formula statewide, while at the same time adapting to community diversification by providing for local taxation. To the extent that it aids the promotion of a public school system, the subsidy formula is fair. To the extent that it provides no less than it makes available to other school districts it is substantial. Given the varying

> interdistrict educational costs, and the uncertain nexus between the cost and quality of education, we cannot say, as a matter of law, that Pennsylvania's subsidy formula is not fairly and substantially related to ensuring a thorough and efficient system of public education.[150]

Since the challengers to the state aid system could not show that they were a class being injured by low expenditures, as measured by low district wealth, the state's system was not found to violate equal protection guarantees. With respect to the equal educational opportunity claim, the court found that, although a constitutional duty is placed on the Legislature to provide equal educational opportunity to the children in the public schools:

> . . . . we see no reason to apply a test under this section any different from the fair and substantial relation test applied in our equal protection analysis. We do not interpret the mandate to "provide for the maintenance and support of a thorough and efficient system of public education" to serve the needs of the Commonwealth as to require absolute equality in educational services or expenditures, but rather equality in the relative sense of adapting to local conditions. . . . . A state aid system weighing district density or sparsity, poverty, number of students, cost per student and district wealth measured by income and equalized real property assessments bears a facially fair and substantial relation to promoting equal educational opportunity. Any compromises of that effort are the result of what we feel to be legitimate and strong state objectives of maintaining state and local control and distributing exiguous sums among the many school districts.[151]

On appeal, this decision was brought to the Supreme Court of Pennsylvania in 1979 and was affirmed.[152] In addition to accepting the basic findings and reasoning of the lower court, the Supreme Court added further considerations for finding the state aid system constitutional. This court found the Philadelphia School District's argument that it had a duty to provide a certain level of educational services which it could not fulfill because of the effect of the statutory funding scheme to be without merit. This school district was found to have no greater duty to provide education for the children of Philadelphia than the Legislature delegated to it and, therefore, it could not be concluded that a greater duty had been delegated than that which the Legislature had provided the district the means to fulfill through the statutory finding scheme. In this regard, the Supreme Court of Pennsylvania went on to say:

> Even were this court to attempt to define the specific components of a "thorough and efficient education " in a manner which would foresee the needs of the future, the only judicially manageable standard this court could adopt would be the rigid rule that each pupil must receive the same dollar expenditures. Even appellants (Dawson) recognize, however, that expenditures are not the exclusive yardstick of educational quality, or even of educational quantity. It must indeed be obvious that the same total educational and administrative expenditures by two school districts do not necessarily produce identical educational services. The educational product is dependent upon many factors, including the wisdom of the expenditures as well as the efficiency and economy with which available resources are utilized.[153]

In a dissenting opinion, two justices stated that the majority applied an incorrect test in this case which lead to a wrong conclusion. Fundamentally, the dissenters believed that the Pennsylvania Constitution established education as a "constitutional right" which would require

the application of the strict scrutiny test rather than the reasonable state's interest level of analysis adopted by the majority. If considered under the strict scrutiny analysis, the dissenters believed the school finance system would be found to impinge upon ". . . Philadelphia's children's constitutionally mandated right to a thorough public education. . . . Because appellants allege that the statutory financing interferes with the constitutional right, it must be closely scrutinized to ascertain whether the alleged discrimination may be justified by a showing of a compelling state interest, incapable of achievement in some less restrictive fashion."[154]

Ohio

In 1979, a class action suit was brought claiming that the Ohio system of financing public education violated its constitution.[155] The state supreme court reversed the trial court's holding that the system violated the constitutional requirement that the General Assembly provide a thorough and efficient system of common schools.

The various provisions of Ohio law that were challenged in this litigation revolved around the allocation formula contained in the Education Review Committee Report of 1974. This section provided the principal rule for state basic aid allocation with provisions to adjust for cost differences among districts, and facilitated the transition from the former formula to the guaranteed yield formula.

Ohio's Education Review Committee Report of 1974 contained a two-part formula in which each school district's participation in the state basic aid program was guaranteed. The first part of the formula guaranteed the same number of dollars per pupil from state and local funds combined. The second part explained local tax effort and the maximum millage rates set by the state of Ohio.

The "equal yield for equal effort" formula was calculated for each district by a formula which equated the level of each district's state funding to a mathematically "equalized" level of property wealth and mathematically "equalized" tax rate. The law required that each school district levy at least 20 mills in order to participate, and it rewarded districts which levied more than 20 school operating mills commensurately with their millage up to 30 mills. This last element was called "reward for effort."

The entire basic support formula was referred to as "guaranteed yield" and "equal yield," and was a variation of a type of school financing commonly called "district power equalizing" (DPE). DPE's objective was to equalize the property wealth base upon which the school districts raise operating revenue through the levy of voter-approved taxes so that school districts received the same number of dollars per pupil in basic state aid plus local revenue for each mill up to 30 mills.

The first step in the state basic aid formula provided for a total yield of $48 per pupil per mill from both local revenue and state support for the first 20 mills, assuming the system was fully funded. This meant that, if all districts received all the local tax revenues which they were presumed under the formula to receive, each district which levied 20 mills would be eligible to receive from local and state funds 20 mills times $48 or $960 per pupil. In that manner, basic support was provided to each school district for the first 20 mills by making up the difference between the district local yield per pupil per mill and $48.

The second calculation for state basic aid was the "reward for effort" element of the state finance system, wherein the state paid a bonus to and rewarded school districts for their school operating millage above 20 mills, up to 30 mills. For this part of the funding, the guaranteed level was established at $42 per pupil per mill. Since the purpose was to pay extra monies to districts based upon the number of mills they levied beyond 20 mills, the procedure was to deduct the district's local yield per pupil per mill from $42 and multiply that difference by the number of students in average daily membership, and finally by the equalized millage in excess of 20 up to 30 mills.

The first issue presented to the court for a decision was whether Ohio's statutory system for financing elementary and secondary education violated the equal protection and benefit clause, Article I, Section 2, of the Ohio Constitution. The trial court's declaratory judgment order stated that the system established "invidious" classifications among Ohio's school children which were neither supported by any compelling state interest nor predicated upon any rational basis, resulting in a violation of the equal protection clause. The Court of Appeals affirmed the trial court's findings. It agreed that Section 2 of Article I of the Ohio constitution provided school-age children with a "fundamental right to equal educational opportunity."[156]

On appeal, defendants (Walter, et al.) argued that the lower courts should be reversed because the Ohio system was rationally designed to allow local control in making decisions about services to be provided to meet perceived educational needs. They stated that "Education is not a fundamental interest and, therefore, the financing system should not be subjected to strict scrutiny."[157] They concluded that even if the system was subjected to "strict scrutiny," local control was a compelling state interest which justified disparity of educational opportunity.

Justice William B. Brown, in the majority opinion, concluded:

> While it is no doubt true that reliance on local property taxation for school revenue provided less freedom of choice with respect to expenditures for some districts than for others, the existence of some inequalities in the manner in which the state's rationale was achieved is not alone a sufficient basis for striking down the entire system. Therefore, although the Ohio system of school financing is built upon the principle of local control resulting in unequal expenditures between (children) who live in different school districts, we cannot say that such disparity is a product of a system that is so irrational as to be an unconstitutional violation of the equal protection and benefit clause.[158]

Justice Locher, in the dissenting opinion, focused on education as a fundamental right. He stated that the key to discovering whether education was "fundamental" was not to be found in comparisons of the relative societal significance of education, but rather, in assessing whether a right to education is explicitly or implicitly guaranteed by the constitution. He asserted that the right to an education was implicitly mandated by Section 2 and 3 of Article VI of the Ohio Constitution. He further stated:

> The provision of public education is the single most important function of our state. Education is at the very foundation of our democracy and it is doubtful that any child may reasonably be expected to succeed in life if he is denied the opportunity of an adequate education. In this sense, the fundamental right to equal educational opportunity is the American Dream as incarnate as constitutional law. . . .[15]

Georgia

In a case decided November 24, 1981, the Georgia Supreme Court upheld the state's system of financing public education.[160] Parents, children, and school officials who resided in school districts which, in relation to other school districts in the state, had a low property tax base, sought a declaratory judgment alleging that the existing system of financing public education violated the equal protection provisions of the state constitution and deprived children in their district of an adequate education.

Public education in Georgia was financed through federal, state, and local funds. In the decade of the 1970s, the state funded an average of 55 percent of the total monies going to public education. The great bulk of state support for local school systems, approximately 80 percent, was allocated under the Adequate Program for Education in Georgia (APEG). In fiscal year 1981, APEG was funded at a level of almost $800 million.

APEG set forth thirteen items for cost calculation purposed: (1) salaries of special education teachers; (2) salaries of preschool teachers; (3) salaries of classroom and vocational education teachers; (4) purchase of instructional media; (5) purchase and repair of instructional equipment; (6) maintenance and operation expenses; (7) payment of sick and personal leave expenses; (8) travel expenses of personnel; (9) student services personnel salaries; (10) salaries of administrative and supervisory personnel; (11) salaries of clerical personnel; (12) pupil transportation; and (13) expenses for maintaining isolated schools. The APEG items were not funded equally. More than half of APEG funding was for item three alone.

APEG was designed to meet basic educational needs. Because basic needs of school districts varied, the amounts allocated to a particular school district within a particular APEG item also varied. Most allotments were based upon the number of pupils in the district in average daily attendance. APEG was not simply a grant from the state to local school districts. As a condition to participation in APEG, each local school district contributed an amount obtained from ad valorem taxation. This amount was referred to as "required local effort" (RLE). Each school district's RLE was calculated on the basis of its proportionate share of the equalized adjusted school property tax digest multiplied by a total state wide local effort figure of 78.6 million. Because RLE was determined on the basis of a school district's proportionate share of property wealth, the property tax rate imposed by each school district for RLE was virtually the same--approximately 2.15 mills.

After a district's RLE was determined, it was deducted from the total amount to which the district was entitled under APEG. The remainder was provided by the state. Theoretically, RLE was an equalizing component in the APEG system. The state provided less funds to school districts which, by virtue of local values, were more capable of financing public education at the local level. In reality, however, RLE did little to equalize property rich and property poor districts. For example, the school in Heard County enjoyed an assessed valuation per pupil in average daily attendance of $138,115, while in Carroll County the corresponding figure was $17,537. Heard County schools were, therefore, 7.9 times wealthier than those in Carroll County. This disparity resulted in a 1977-78 expenditure of $1,682 per pupil in average daily attendance in the highest spending district to $777 in the lowest spending district. As indicated, the total statewide RLE had been fixed at approximately $78.6 million. Meanwhile, education costs continually increased. Whereas in the early 1970s total RLE constituted almost 20 percent of APEG, it amounted to only 10 percent when this case was filed. Total RLE was at

such a low level relative to APEG expenditures that it did not have a significant equalizing effect between property rich and property poor districts. Thus, APEG had become a flat grant from the state to the local districts.

The issue presented in the main appeal was whether the trial court erred in holding that the current system of financing public education in Georgia violated the equal protection provision of the state constitution. The court construed the "adequate education" provision of the Georgia Constitution as requiring the state to provide basic educational opportunities to its citizens, and found that the existing public school finance system met constitutional requirements in this regard. As stated by the court:

> The Georgia constitution thus contains very specific provisions relating to the obligation of localities to impose a tax for the maintenance of the public schools and general provisions imposing a duty on the state and General Assembly to provide its citizens an "adequate education." Nowhere in . . . the Constitution is there any express statement as to the obligation of the state to equalize educational opportunities.
>
> In view of the foregoing, we must conclude that the "adequate education" provisions of the constitution do not restrict local school districts from doing what they can to improve educational opportunities within the district, nor do they require the state to equalize educational opportunities between districts.[161]

The second issue in question was whether the state's equal protection provision imposed an additional obligation on the state to equalize educational opportunities. In holding that such an additional obligation was not imposed under the Georgia Constitution, the court concluded that:

> In view of the extensive treatment afforded the subject of public education in our state constitution, we believe the absence of any provision imposing an affirmative duty on the General Assembly to equalize educational opportunities is of constitutional significance. Although the Georgia Constitution provides for equal protection, "[e]very statement in a state constitution must be interpreted in the light of the entire document, and not sequestered from it. . ."
>
> However, given the applicability of equal protection principles to the instant case, we must conclude that the existing Georgia public school finance system is not subject to appellees' attack.[162]

In a unanimous opinion, the court rejected the "rational relationship" test suggested by the trial court. The court concluded:

> Our holding that the current system of financing public education in Georgia is not unconstitutional, should not be construed as an endorsement by this court of the status quo. Constitutions are designed to afford protections to society. Plaintiffs have shown that serious disparities in educational opportunities exist in Georgia and that legislation currently in effect will not eliminate them. It is clear that a great deal more can be done and needs to be done to equalize educational opportunities in this state. For the present, however, solutions must come from our lawmakers.[163]

The evidence in this case was limited in stating facts concerning pupil expenditures in wealthy school districts as compared to pupil expenditures in poor school districts.

Colorado

Following the District Court of the City and County of Denver declaring the Colorado public school financing system to be unconstitutional, the State Board of Education appealed this decision to the Supreme Court of Colorado.[164] With two dissenting justices, the Colorado Supreme Court reversed this decision and held that the system was constitutionally permissible.

The Colorado system was primarily based on financial support from locally levied property taxes and state contributions to provide education for 535,085 students in 181 K-12 school districts. In 1977, this system received forty-seven percent funding from local taxes, state general fund aid amounted to forty-three percent, federal revenues accounted for six percent, and the remaining four percent was derived from miscellaneous sources. Within the statutory provisions for levying taxes for educational purposes, each school district certified to its county commissioners the amount of revenue needed for operating its school system. The county commissioners then placed a levy against the valuation of taxable property within the district's boundaries to raise the desired revenue. Each school district could expend all such revenue collected within its boundaries, provided it was used strictly for educational purposes.

The school finance system created four main components to provide funding for the general educational efforts of a school district. These components were authorized revenue base, state equalization aid, guaranteed yield plan, and capital outlay financing.

A. Authorized Revenue Base

The authorized revenue base (ARB) was a specific dollar amount established annually for each district and was the maximum annual amount a district could spend in general operating expenses per pupil. The ARB amount was first established for each district in 1974, and was based in part on the amount each district was then spending per pupil. This spending figure was used by the General Assembly as an estimate of what the educational costs were for each district. However, the ARB had been adjusted upwards, especially in the low spending districts, to more accurately reflect the educational needs of the districts. The minimum ARB in 1982 was $2,000 per pupil, or the 1981 ARB level plus $160, whichever amount was greater.

A school district could increase its ARB by one of two ways. First, by requesting an ARB increase from the State District Budget Review Board. Second, if this request was refused in part or in whole, by holding an election so that the electorate decided on the increase. When an ARB increase was granted under either procedure, the district was responsible for funding the increase for the first year. Thereafter, it was included in the formula determining the state equalization aid.

B. State Equalization Aid

The statutory equalization program provided financial support for districts lacking a high tax base or revenue raising capacity. Under this component a district with low revenue generating capacity received aid to bridge the difference between revenues generated by local property tax levies and the statutorily guaranteed amount. For example, in 1977, the General Assembly amended the state equalization program in order that $35.00 per pupil would be guaranteed for each mill levied for the general fund of a school district.

A formula used in determining whether a district was entitled to equalization aid may be illustrated by applying it to the South Conejos School District, a district receiving state equalization aid:

Assessed Valuation (AV) $4,772,260.00

Authorized Revenue Base (ARB). . $ 1,181.08

Attendance Entitlement (AE) . . . 782 students

Then it is necessary to apply these figures to the formula to determine the local share per mill per pupil:

$$\frac{AV}{AE} \times \frac{1 \text{ mill}}{} = \frac{\$4,772,260}{782} \times 0.001 = \$6.10/\text{mill/pupil}$$

State Guarantee $35.00

Local Share . . . . . $ 6.10

State Equalization Aid $28.90/mill/pupil

To determine the mill levy:

$$\frac{ARB}{\text{State Guarantee}} \quad \frac{\$1,181.08}{\$35.00} = 33.75$$

With the mill levy being 33.75, the state equalization aid per student was $28.90 X 33.75 = $975.38. Thus, the total State aid to the South Conejos School District in 1978 was $975.38 X 782 (AE) = $762,844.00.

Accordingly, the State provided the South Conejos District with the difference between the state guaranteed amount and the revenue raised by a 1 mill levy. In contrast, a 1 mill levy in Rangely School District, a district with higher taxable property values, raised $326.27 per pupil during this same period. The Rangely School District was, therefore, clearly ineligible for State equalization aid.

C. Guaranteed Yield Plan

Regardless of a school district's ability to raise local taxes to meet or exceed the State's equalization aid of $35/mill/pupil, the guaranteed yield provided each district with a flat grant per pupil per mill. If a district levied in excess of 20 mills, the minimum guarantee was $11.35 per mill per pupil in 1979, $13.35 in 1980, $14.41 in 1981, and $15.53 in 1982. If the district levied less than 20 mills, the minimum guarantee of $11.35 set in 1979 remained in effect through 1982. In effect, this gave a district the benefit of either the State's share as calculated by the equalization formula or the minimum guarantee, whichever was greater. As an example, the finance formula as applied to the Englewood School District for 1978, resulted in the following guaranteed yield:

Assessed Valuation $105,870,300.00

Authorized Revenue Base . . . . $ 1,720.85

Attendance Entitlement . . . . . $ 4,201.80

$$\frac{\$105,870,300 \times 0.001}{4,201.80} = \$25.20/\text{mill/pupil}$$

Accordingly, under State equalization aid, the Englewood School District would receive $9.80/mill/pupil ($35.00 minus $25.20). However, because of the minimum guaranteed yield, the minimum this district actually received was $11.35/mill/pupil. Thus, in 1978, the Englewood School District had a financial budget of $36.35/mill/pupil or $1.35/mill/pupil over the $35.00 guaranteed yield.

D. Capital Outlay Financing

There were two primary methods by which school districts could finance capital construction projects: the capital reserve fund, and the bond redemption fund. Both funds were financed entirely out of local property tax revenues.

(1) Capital Reserve Fund. The levy for the capital reserve fund could not exceed four mills in any given year. Expenditures from this fund were limited to long-range future programs for purposes such as acquisition of land and the construction of buildings thereon or the construction of additions to existing structures.

The trial court found that the capital reserve fund operated so that high-wealth districts could raise more revenue from the statutory maximum of four mills than a low-wealth district. The facts support this finding. In 1977, for example, the Frisco School District was able to raise $386.52 per pupil under the four mill levy, while the South Conejos School District was only able to generate $23.60 per pupil.

(2) Bond Redemption Fund. This fund was used for major building projects and was subject to approval by the electorate. It operated under a statutorily imposed debt ceiling equal to 20% of a district's assessed property valuation.

The trial court found that high-wealth districts were able to generate far greater revenue within the statutory debt ceiling than were the low-wealth districts. Evidence at trial revealed that in 1977, the school districts in the top 10% of assessed property valuation had an average bond redemption rate of 4.74 mills, generating an average yield of $184.50 per pupil, while school districts in the lowest 10% levied at a rate of 12.56 mills, yielding $98.44 per pupil. The bond redemption fund operated so that, in 1978, for example, the South Conejos School District had a debt ceiling of $954,452 while the Granby School District's debt ceiling was $8,173,380.

The overall scheme for funding Colorado's public schools, therefore, was partially based on the property values within each of the 181 districts. Because of the differences in assessed valuation of the districts, the amount raised and spent per pupil varied among the districts. The State Board of Education argued that this system was both rationally related to a legitimate State purpose and was essential to fostering local control within each district. The challengers (Lujan, et al.) argued that the system violated the Equal Protection Clause of the Colorado Constitution by interfering with their "fundamental right" to education and by creating a "suspect classification" based on wealth. They argued that the system becomes subject, therefore, to the "strict scrutiny" standard which required the system to be shown to be necessary to serve a "compelling interest." Lastly, the claim was made that the system was impermissible because it failed to meet the Colorado constitutionally mandated "thorough and uniform" system of free public education.

Beginning with the equal protection claim, the court considered the effect of the system on public schools. The court first found that the Colorado Constitution mandates that the General Assembly must provide public education but did not establish education as a fundamental right or require it to establish a central public school finance system restricting each school district to equal expenditures per student. As stated by the court:

> While our representative form of government and democratic society may benefit to a greater degree from a public school system in which each school district spends the exact dollar amount per student with an eye toward providing identical education for all, these are considerations and goals which properly lie within the legislative domain. Judicial intrusion to weigh such considerations and achieve such goals must be avoided. This is especially so in this case where the controversy, as we perceive it, is essentially directed toward what is the best public policy which can be adopted to attain quality schooling and equal educational opportunity for all children who attend our public schools.
>
> The method Colorado has chosen for funding public school education is the real focal point of the challenge here. We note that appellees did not allege or prove that they are being denied an educational opportunity. Appellees instead argue that we should accept, amid a raging controversy, that there is a direct correlation between school financing and educational quality and opportunity. We refuse, however, to venture into the realm of social policy under the guise that there is a fundamental right to education which calls upon us to find that equal educational opportunity requires equal expenditures for each school child. Even if we were to accept appellees'contention, we would, nonetheless, refuse to adopt their a priori argument whereby a lack of complete uniformity in school funding between all of the school districts of Colorado necessarily leads to a violation of the equal protection laws in this state. Lastly, a review of the record and case law shows that courts are ill-suited to determine what equal educational opportunity is, especially

since fundamental disagreement exists concerning the extent to which there is a demonstrable correlation between educational expenditures and the quality of education.

A heartfelt recognition and endorsement of the importance of an education does not elevate a public education to a fundamental interest warranting strict scrutiny. The constitutional mandate which requires the General Assembly to establish a thorough and uniform system of free public schools is not a mandate for absolute equality in educational services or expenditures. Rather, it mandates the General Assembly to provide to each school age child the opportunity to receive a free education, and to establish guidelines for a thorough and uniform system of public schools.[165]

In considering the issue of whether wealth is a suspect classification under the Colorado Constitution's equal protection provisions, the court found that the appellees (Lujan, et al.) failed to prove that they constituted a recognized, distinct class. While appellees claimed that a suspect class was present, either as a "class" composed of low-wealth school districts or as a "class" composed of low-income persons, the court found that the evidence did not "demonstrate that the school finance system operates to the peculiar disadvantage of any identifiable, recognized class."[166] This conclusion was based on the opinion that the criteria for a suspect class cannot be met by a school district regardless of the merits of its claim. Under the Colorado Constitution's equal protection guarantee, a political body cannot be a suspect class. In addition, there was no showing of a distinct and insular "class" of poor persons as is required for equal protection analysis. Under this analysis, defining a "class" as being a group marked by common attributes or characteristics, the alleged class of "poor persons," while possibly linked by their respective income levels, have no common attribute relative to Colorado's school financing system. The evidence did not show that poor persons in Colorado are concentrated in low-property wealth districts, or that they uniformly or consistently receive a lower quality education, or that the districts in which they reside uniformly or consistently expend less money on education.

For example, evidence at trial showed that Denver had the greatest concentration of school children from low-income families. Yet Denver, by comparison, was a relatively high property wealth district. Thus, it was considered incorrect to suggest that poor persons, as a class, receive discriminatory treatment. Secondly, a Colorado Department of Education study showed that there was no correlation between low-property wealth districts and low-income residents. Indeed, the study suggested that it was more accurate to state that a correlation existed between a district's property wealth and pupil population. For example, the study reported that in 1977, the Arapahoe School District in Cheyenne County had an assessed taxable property valuation of $3,785,270, while South Conejos School District's valuation per pupil was $4,675,100. Yet, due to disparities in pupil population, Arapahoe's assessed valuation per pupil was $52,940,84, while South Conejos' valuation per pupil was $5,897,69.

Appellees, therefore, failed to prove that they compose a class which is identifiably distinct and insular. There was no evidence showing a satisfactory statistical correlation between poor persons within the state and low-spending school districts. Such a correlation was considered essential if the court was to apply strict judicial scrutiny to an invidious discrimination of a "suspect class." Here, however, the alleged "class" of low-income persons constituted an

amorphous group, a group which changed over time and by context and which was unable to show the historical pattern of discrimination that traditional "suspect" classes can.

In Rodriguez, the Supreme Court reiterated the traditional features of suspectness: namely, (1) that the class is either subjected to a history of purposeful unequal treatment with its attendant disabilities, or (2) it is relegated to such a position of political powerlessness as to command extraordinary protection from the majoritarian political process. It was evident to the Colorado court in this case that the appellees did not satisfy either of these indicia of suspectness.

Lastly, the court concluded that wealth alone is not a suspect class since the Colorado Constitution does not forbid disparities in wealth, nor does it forbid persons residing in one district from taxing themselves at a rate higher than persons in another district. Having concluded that no suspect class or fundamental right was involved in this case, the court considered the remaining issue in the equal protection analysis of whether the school finance system rationally furthered a legitimate state purpose. The court recognized that historically public education in Colorado had been centered on the philosophy of local control. Taxation of local property was not only the primary means of funding local education, but also of insuring that the local citizenry direct the business of providing public school education in their school district. To continue this system was a legitimate function of the state and the school finance system contributed to this purpose. As expressed by the court:

> We find that utilizing local property taxation to partly finance Colorado's schools is rationally related to effectuating local control over public schools. The use of local taxes affords a school district the freedom to devote more money toward educating its children than is otherwise available in the state-guaranteed minimum amount. It also enables the local citizenry greater influence and participation in the decision making process as to how these local tax dollars are spent. Some communities might place heavy emphasis on schools, while others may desire greater police or fire protection, or improved streets or public transportation. Finally, local control provides each district with the opportunity for experimentation, innovation, and a healthy competition for educational excellence.
>
> Although we recognize that due to disparities in wealth, the present finance system can lead to the low-wealth district having less fiscal control than wealthier districts, this result, by itself, does not strike down the entire school finance system. Indeed, a legislative scheme may not be condemned simply because it does not effectuate the state's goals with perfection.
>
> Although all educational financing cases are sui generis in the sense that the alleged deprivation is relative rather than absolute, here, we find no discrimination, invidious or otherwise, in a system that applies a uniform subsidy formula on a statewide basis, while concurrently promoting community control by means of local taxation.[167]

The final claim was a contention that the finance system violated the education clause of the State Constitution. This provision stated, in relevant part, that: "The General Assembly shall . . . provide for the establishment and maintenance of a thorough and uniform system of free public schools throughout the state. . ."[168] Appellees claimed that the "thorough and uniform" clause required the state to provide equal educational opportunity to its schoolchildren,

and that the present system violated this mandate by "creating varying educational opportunities due to revenue differences between the districts."[169] In also rejecting this claim the court found the term "thorough and uniform" did not require complete equality in the sense of providing free textbooks to all students or to require equal expenditures within the district. As expressed by the court:

> We find that the Colorado Constitution is satisfied if thorough and uniform educational opportunities are available through state action in each school district. While each school district must be given the control necessary to implement this mandate at the local level, this constitutional provision does not prevent a local school district from providing additional educational opportunities beyond this standard. In short, the requirement of a "thorough and uniform system of free public schools" does not require that educational expenditures per pupil in every school district be identical.[170]

In separate dissents two justices provided somewhat different reasons for disagreeing with the majority opinion. One justice concluded that the state limitation on funding of school district capital expenditures violated both the equal protection and "thorough and uniform" requirements of the Colorado Constitution. In this view, because levy and debt limitations of the system effectively prevented property poor districts from raising adequate funds for capital expenditures, and because the majority opinion did not enunciate a legitimate state purpose for imposing these limitations, they violated the requirement of equal protection. In addition, this dissent expressed the opinion that the state's failure to provide any mechanism for mitigating the vast disparities in school districts abilities to finance capital expenditures, combined with funding limitations, violated the provision that the state provide a thorough and uniform system of education. This was viewed, in effect, as an absolute deprivation of educational opportunity to students in poorer school districts which justified the application of the strict scrutiny level of analysis. The second dissent also perceived strict scrutiny as the appropriate test of constitutionality because the finance system failed to accord equal protection to all Colorado school children.

New York

The State of New York experienced dual challenges to the method of financing elementary and secondary public school education. The state aid system was originally challenged by a group of plaintiffs comprised of 27 school districts situated in 13 counties and 12 school children who were students in seven of the school districts. A second group of plaintiffs were granted the right to intervene in this action. This second group included the Boards of Education of the cities of New York, Rochester, Buffalo, and Syracuse; the City of New York itself; certain officials and 12 school children who were students in the "Big Four" school districts. This dual challenge was brought on the basis of three claims: that the New York system of public school finance violated the Equal Protection Clause and Education Article of the State Constitution and the Equal Protection Clause of the Fourteenth Amendment. The later claim was withdrawn following the Supreme Court's decision in Rodriguez.[171]

Similar to California, New York had created a public school system of over 700 school districts with the power to levy and collect taxes on the real property within district boundaries and to retain such tax revenues to finance public education within each district. Cities with populations exceeding 125,000 had been given similar powers. By decision of the State, local

property taxes were the primary source of funds for the support of public elementary and secondary education. The school districts had grossly unequal amounts of real property wealth. Because of this, the application of any given tax rate yielded grossly unequal revenues per pupil. Districts poorer in real property wealth, such as the plaintiff districts, levied taxes at substantially higher rates than neighboring districts having greater real property wealth but were unable to match the latter in expenditures per child or in the provision of educational services.

The principle features of the New York school finance system involved a plan for state assistance to enable each district to raise $1,200 per pupil by levying a 15 mill tax on its own tax base. If the 15 mill tax levy resulted in a figure less than $1,200 per pupil, the State supplied the amount necessary to reach that level. The statute provided a special method for counting pupils as part of the process of determining how the state aid was to be distributed. This involved refinements beyond the mere calculation of the average number of pupils present on each regular school day in a given period. In order to give recognition to differences in the cost of educating children at different school levels as well as cost differences in educating children whose physical, mental, emotional or socio-economic background called for educational techniques adapted to their particular needs, various weightings were provided to produce a pupil count reflective of such specialized factors.

Under a strict application of the aid formula, a school district with full property value of more than $80,000 would automatically be rendered ineligible for state aid (15 mills x 80,000 = 1,200). There was included in the state aid statute a so-called "flat grant" provision, however, which assured that every school district, regardless of its property wealth, would receive a minimum sum from the State. By the use of a formula applicable to districts with full valuation ranging from $52,800 to $101,000, a decrease of aid per aidable pupil unit from $408 at a valuation of $52,800 to $360 at a valuation of $101,000 resulted. A district with a full valuation above $101,000 was guaranteed a minimum of $360 in state aid per aidable pupil unit.

The other features included in the aid statute operated to cause all but a few school districts to receive state aid on a basis different from the workings of the aid formula with its various weightings. These features were the "save-harmless" provisions of the statute. There were two types of save-harmless provisions. The purpose of each was to guarantee that a district would receive at least as much state aid in the current year as it received last year. Under what was called "per pupil save-harmless" a school district was guaranteed that it would receive at least as much aid per aidable pupil unit in the current year as it did in the preceding one. That type of save-harmless aid was particularly important to growing districts. With property valuations rising, districts growing moderately in pupil population but rapidly in property value become wealthier causing a reduction in the amount of state aid per pupil. The "per pupil save-harmless" provisions of the statute negated the operation of that part of the state aid formula that would otherwise control under those conditions.

The other type of save-harmless provision was called "total save-harmless." It provided that a school district would not receive less total state operating expense aid in the current year than it received in the preceding one. This type of save-harmless provision was particularly helpful to school districts that were losing pupil population since they continued to receive the same amount of state aid even though they had fewer pupils and this, in turn, meant they actually received more money per pupil.

Evidence at the trial showed that, because of declining school populations and increasing property values, almost all school districts found it to their financial benefit to calculate state aid entitlements on the basis of one or the other of the save-harmless provisions. At the time of trial the evidence was that 699 of the state's 708 major school districts were operating under save-harmless provisions of the state aid law. It was also shown that 18 districts were receiving aid based on their 1965 entitlement as the result of the use of save-harmless calculations. The almost total use of save-harmless provisions operated to vitiate the equalizing purposes of the state aid formula and perpetuated inequities that were supposed to have been corrected or at least ameliorated.

Data introduced at the trial indicated that this system resulted in a wide range in real property wealth among school districts. The poorest district had $8,884 in real property wealth behind each pupil while the richest had $412,370, a ratio of 46 to 1. In terms of expenditures per pupil, the data indicated a district spending range per pupil from a low of $936 to a high of $4,215, a ration of 4.5 to 1. Such data indicated to the plaintiffs that there was a "direct, positive and significant correlation between property value and expenditures. . .the wealthier a district in property value, the more it spends per pupil; the poorer the district, the less it spends."[172] This conclusion was reached with full recognition that the state aid system included a "foundation grant" which entitled each school district to state assistance in raising a support figure of $1,200 per aidable pupil unit by levying a hypothetical 15 mill tax upon the full value of the real property of a school district.

Although the State contributed from its general revenues to supplement local tax revenues, such state aid did not eliminate the gross disparities in the allocation of education resources caused by the decision to rely chiefly on the local property tax to finance public elementary and secondary education. The formula contained in the Education Law to supplement locally raised revenues was structurally unable to remedy the disparities caused by the decision to rely chiefly on the local property tax to finance public education. Because the State's school finance system relied principally on local real property taxes and because the state aid program did not eliminate the disparities produced by such reliance, there were gross disparities in per pupil expenditures among the districts due to the uneven distribution of real property wealth among the school districts.

The disparities in expenditures per pupil resulting from variations in local real property wealth produced substantial differences in what school districts were able to provide for their pupils. Districts that were poorer in real property wealth, such as the plaintiff districts, could not match the ability of districts with greater real property wealth to offer educational advantages such as: small class size; experienced and effective teachers; low pupil-teacher ratios; curricular breadth; extensive extracurricular programs; modern equipment; and special programs for the disadvantaged or the specially gifted.

By virtue of the foregoing, the original plaintiffs asserted in their first cause of action that the State's method of financing public education "denies to plaintiff students and their parents those educational resources available to students in other, wealthier districts in the State."[173] Further, that such system prevents the plaintiff districts from carrying out their full responsibilities and obligations to the schools, parents and children and compels them to offer an education inferior to that offered by other districts possessing greater real property wealth.

In the second cause of action facts were described that were alleged to constitute a violation of the Education Article of the State Constitution (Art. XI, Sec. 1). The Education

Article required the State to create a statewide system of free common schools in which all children may be educated. It was alleged that the State has failed to meet that obligation. The method chosen by the State for financing public schools did not create any uniform statewide system. Rather, it established over 700 different school systems with widely differing capacities to provide educational resources to which the State had delegated its own constitutional responsibility to establish and finance public schools where all the children of the State may be educated. Because such method compelled each district to depend on its own local property wealth as the primary measure of resources available for its children's education, and because those resources vary greatly from district to district, there was no uniformity in resources available for educational purposes from one district to another.

Noneducational demands upon the local real property tax base, the costs of educational services and the educational needs of particular children or groups of children varied greatly from district to district. These factors served to exacerbate the inequalities arising from the uneven distribution of real property wealth.

Accordingly, there was no assurance that any two pupils, who were alike except for their place of residence being in different school districts, would be afforded equivalent educational advantages. By accident of greater real property wealth, one district might be able to offer a group of educational features which another district, by the accident of having lesser property wealth, was unable to offer its pupils. The plaintiffs claimed that in choosing a school finance system that permitted such gross disparities to exist, the State had failed to meet its constitutional obligation to provide a "system" in which "all the children" of the State may be "educated." Such a system, it was alleged, also denied to some children, based on the lesser real property wealth of their school districts, the means to participate meaningfully as citizens and to function successfully in the labor market.

In summary, by making the extent to which a child may be educated a function of the real property wealth of the school district in which that child happened to reside, or the school district in which that child's parents were able to afford to live, the State violated the democratic and egalitarian intention of the constitution's Education Article, substituting in its stead an impermissible reliance on the accident of real property wealth as the ultimate determinant of the quality of education available to the children in any particular part of the State.

The two groups of plaintiffs also claimed that the effect of the New York state aid system which provided grants for operating expenses to local school districts in proportion to their lack of local taxable resources for financing public education employed:

> . . . so arbitrary and inadequate a measure of local incapacity that the large urban school districts rendered poorest in school finance resources because of their greater municipal services, burdens and school costs, are treated as wealthy and receive far less state aid than other school districts that have more local resources for providing education to their pupils.[174]

The plaintiffs also claimed that, in attempting to grant special state aid assistance to school districts for students requiring compensatory services, the state aid system arbitrarily and inequitably granted less and inadequate aid per pupil to the largest urban school districts having the highest concentration of such students and, therefore, the greatest need for compensatory services with which to provide them learning opportunities.

Based upon these claims, the two groups of plaintiffs sought, in part, a judgment that the New York system for financing public schools violated the two specific provisions of the State Constitution. They also asked the court to retain jurisdiction over this case for a "reasonable period of time" to permit the legislature time to enact a new, constitutional school finance system and, if the legislature failed to enact such a system, then the court was asked to issue an injunction against the continuation of the present school finance system.

The defendants, the Commissioner of Education of the State of New York (Nyquist) and several other state officials, answered these claims with 28 defenses. Fundamentally, they claimed that the state aid system was based on a "rational policy" determination made by the legislature and, therefore, it constituted a valid exercise of legislative authority, and that the legislature had met the constitutional mandate imposed by the Educational Article of the State Constitution by enacting the state aid system. In addition to these basic claims, the defendants also argued that:

1. The statutes that were the subject of this litigation made no distinction based upon personal wealth;

2. Primary and secondary education was not funded principally by taxes on real property;

3. The Education Law did not require that an unfair proportion of support for education be borne by the local real property tax;

4. The provisions for a minimum flat grant to each school district insured that every district received some share of the appropriations from general state revenues for its educational program;

5. The determination of "municipal overburden" and the weight accorded thereto was a question of public policy to be made by the legislature through the political rather than the judicial process; and,

6. The grievances complained of by the two groups of plaintiffs should be addressed to the legislature for redress rather than to the court.

The Supreme Court of Nassau County found for the plaintiffs on the basis of the Equal Protection and Education Articles of the New York Constitution. This court concluded that the disparity in expenditures among school districts resulted in differences in professional staff ratios, class size, variety and breadth of curriculum, offering of adequate programs in the arts and in supplementing instructional programs with "enriching experiences" such as field trips, and in the experience, salary and educational attainment levels of teachers employed in districts having lower levels of expenditures compared with districts with high expenditures per pupil. In addition, this court specifically stated that:

> It is important to keep in mind that the real property within a school district's boundaries is not only the tax base for local school tax revenues but the base for separate and distinct tax levies to support the services supplied by other governmental entities such as counties, towns, villages and certain types of special districts.

> An especially burdensome consequence for districts with relatively low property wealth is that such districts are placed in the position of having to tax property at much higher rates to reach the same or lower levels of expenditure than is the case in districts with produces serious effects on the residents of and the educational services supplied by districts with low property wealth.[175]

The court found that this "municipal overburden" was negatively affecting large urban school districts and the state aid system failed to reflect this factor in determining the amount of assistance provided to such districts. The ability of the urban school districts to finance education within their borders was viewed as being "seriously impaired" by the numerous demands on the tax dollar in such districts. The state aid system measured a district's fiscal capacity by the amount of real property value behind each resident pupil in average daily attendance and assumed that districts were equally able to apply revenue from real property taxes levied on their real property tax bases for the support of their schools. The data indicated that the higher expenditures in such districts for police and fire protection, health services, correction facilities, mass transit, parks and recreational facilities, subsidized public housing, and similar municipal services did establish that, in measuring local funding ability, the state aid formula overstated the capacity of cities to finance their schools because it disregarded the "municipal overburden" drain on noneducational services on the local tax dollar. By failing to take into account the reduced urban education tax dollar, the state aid formula exaggerated the actual capacity of cities to finance their schools from local revenue sources.

This court also accepted the plaintiffs' argument that the New York state aid system disregarded the "educational overburden" of large urban school districts. The plaintiffs argued that such districts "have the most difficult and most expensive school populations in the State to educate."[176] The data supported this contention by illustrating that such districts did have the largest concentrations of disadvantaged students requiring compensatory education due, in part, to impaired learning readiness, impaired learning progress, impaired mental and emotional health, impaired physical health, special education (handicapped) students, and foreign language-speaking children. The large urban school districts did not receive state aid on an "equitable basis" for such students and, as viewed by this court, "the failure to provide state aid on an equitable basis deprived the children in the large city districts of an equal education opportunity."[177]

While recognizing that the New York school finance system was intended "to serve the additional purpose of remedying inequalities in such educational opportunities that would exist because of lack of local resources unless the state furnished financial assistance," the court found that it was the state aid system itself which accounted for districts with greater property wealth spending more per pupil than their poorer counterparts.[178] Therefore, the court concluded that the New York system of providing state aid to public schools denied the plaintiffs equal protection of the law under the provisions of Article I, Section II of the New York State Constitution. In addition, the court found this system violated Article XI, Section I, of the New York Constitution which provided:

> The legislature shall provide for the maintenance and support of a system of free common schools, wherein all the children of this state may be educated . . .

Since the court interpreted this Education Article to impose on the State an obligation to assure to each school child an educational program that was appropriate to that child's needs, and since the State was not adequately recognizing the varying capabilities of districts to raise

educational funds through taxes levied on disparate real property, the manner in which the state provided school funds for the "maintenance and support of a system of free common schools" failed to meet the obligation imposed by this Article. The court, therefore, found the state aid system to be unconstitutional and retained jurisdiction in this case. The court did not elect to intervene any further and concluded "the Legislature must be afforded an opportunity to develop a suitable plan for the revision of the state's system of financing public education."[179]

On appeal to the Supreme Court, Appellate Division, the decision of the Supreme Court, Nassau County, that the New York method of financing public education was constitutionally defective was affirmed but modified.[180] This court, however, departed from the rationale used for the lower court's decision. Following the lower court's decision, the Legislature altered the state aid formula which provided for a "two-tier" system. The first tier entitled each school district to raise $1,650 per weighted pupil by imposition of an 11.57 mill tax on its full tax base with the State compensating for any deficiency. The second tier was keyed to the adjusted gross income (for income tax purposes) behind each pupil unit in the district. With an adjusted gross income of less than 125 percent of the state average of $29,700, a district would receive assistance to a theoretical maximum of $235 per pupil unit if the income was zero. Although intended to reduce the property poor-property rich district disparities, this two-tier modification's total effect on the inequities in the state finance system was insignificant in its effect because, particularly with regard to the second tier, the large urban district's income generally exceeded the statewide average despite the huge masses of poverty stricken who resided within their boundaries.

This court also clearly rejected the defendants' argument that the state school finance plan was intended to further a rational state purpose of preserving local control over education. In its rejection of this claim, the court stated:

> We balance, then, the extensive evidence of disparity and discrimination against the justification the State offers--that the present method of financing education preserves local autonomy. We find that the State has not sustained its burden of proof. In school districts containing a large percentage of the State's school children, the current wealth-based system severely constrains the ability of school boards and administrators to provide the personnel services, curricula and even the equipment to furnish the educational offerings they deem suitable for their pupils. The freedom to choose and deliver desired educational output is so inextricably and demonstrably linked to the degree of property wealth behind each pupil that meaningful local independence is largely reserved for areas with the real estate resources to exercise it. Local school districts cannot choose to have the best education by imposing the highest tax rate. Instead, the quality of the educational opportunity offered by any particular district is largely determined by the amount of taxable property in the district. For the property-poor, local control of education is more illusory than real, for it cannot be utilized to produce the educational output local authorities perceive as appropriate but only what a limited local tax base will permit. . .we reject the defendants' contention that local independence of choice is furthered by the fiscal scheme by which education is currently funded.[181]

An appeal from this decision was taken to the Court of Appeals of New York in 1982.[182] In reversing the two lower court decisions, this court found that the New York system of financing public schools did not violate the Equal Protection Clause or the Education Article of the

State Constitution. While accepting the data received by the two lower courts concerning the revenue generating and expenditure levels among school districts in New York, as well as the analysis of the impact of the state school finance system on local school districts, the court found that the plaintiffs did not claim that the educational facilities or services being provided in their school districts fell below the statewide minimum standard of educational quality and quantity fixed by the Board of Regents. Their attack was directed at the existing disparities in financial resources which "lead to educational unevenness above that minimum standard."[183] Such issues, in the view of this court, are of "enormous practical and political complexity, and resolution appropriately is largely left to the interplay of the interests and forces directly involved and indirectly affected in the arenas of legislative and executive activity. This is of the very essence of our governmental and political polity. It would normally be inappropriate, therefore, for the courts to intrude upon such decision-making."[184]

With respect to the argument that the large urban school districts financially suffered due to metropolitan overburden, the court observed that such inequalities were the product of demographic, economic, and political factors intrinsic to the cities themselves and, as such, they could not be attributed to legislative action or inaction. The disbursement of the funds received from real property taxation among education and other municipal services was viewed as decisions to be made by municipal governmental bodies, not by the courts. Applying this "rational basis" test, which this court concluded was the proper standard for review, the court could not say that the distribution of funds did not have a rational governmental basis of promoting local control of education and did not, therefore, violate the Equal Protection Clause of the State Constitution. As stated by the court:

> Under the existing system the State is divided into more than 700 local school districts, each of which varies from the others and, from time to time, varies within itself, in greater or lesser degree, as to number of pupils and value of assessable real property, as well as with respect to numerous other characteristics, including personal wealth of its taxpayers. Outside the cities in the State (in which school funding is a part of the total municipal fiscal process), funds for the support of the education program offered in the schools of a district are raised through the imposition of local taxes following voter authorization based on approval of a budget prepared and submitted by an elected board of education, reflecting the instructional program (within standards fixed by the State) perceived by the local board of education to be responsive to the needs and desires of the community. By way of assuring that a basic education will be provided and that uniform, minimum expenditure per pupil will occur in each district, the Legislature has long provided for payment of supplementing State aid such that presently $1,885 per pupil (and, by a weighting computation, larger amounts for particular types of pupils) is available for education in each district. Throughout the State, voters, by their action on school budgets, exercise a substantial control over the educational opportunities made available in their districts; to the extent that an authorized budget requires expenditures in excess of State aid, which will be funded by local taxes, there is a direct correlation between the system of local school financing and implementation of the desires of the taxpayer.
>
> It is the willingness of the taxpayers of many districts to pay for and to provide enriched educational services and facilities beyond what the basic per pupil expenditure figures will permit that creates differentials in services and facilities. . . . Any legislative attempt to make uniform and undeviating the educational opportunities

> offered by the several hundred local school districts--whether by providing that revenue for local education shall come exclusively from State sources to be distributed on a uniform per pupil basis, by prohibiting expenditure by local districts of any sums in excess of a legislatively fixed per pupil expenditure, or by requiring every district to match the per pupil expenditure of the highest spending district by means of local taxation or by means of State aid (surely an economically unrealistic hypothesis)--would inevitably work the demise of the local control of education available to students in individual districts. . . .[185]

Turning to the plaintiffs' argument that the school finance system violated the Education Article of the State Constitution, the court found that the constitution made no reference to any requirement that the education to be made available be equal or substantially equivalent in every district. What was required was a statewide system assuring minimal facilities and services. The Education Article mandates only that the Legislature provide for maintenance and support of a system of free schools in order that an education might be available to all the State's children. Since the Legislature had made such a system available, the constitutional mandate had been satisfied. As stated by the court:

> Interpreting the term education, as we do, to connote a sound basic education, we have no difficulty in determining that the constitutional requirement is being met in this State, in which it is said without contradiction that the average per pupil expenditure exceeds that in all other States but two. There can be no dispute that New York has long been regarded as a leader in free public education.
>
> Because decisions as to how public funds will be allocated among the several services for which by constitutional imperative the Legislature is required to make provision are matters peculiarly appropriate for formulation by the legislative body (reflective of and responsive as it is to the public will), we would be reluctant to override those decisions by mandating an even higher priority for education in the absence, possibly, of gross and glaring inadequacy--something not shown to exist in consequence of the present school financing system.[186]

So finding, the court reversed the two lower court decisions and upheld the constitutionality of the New York system of public school finance.

Maryland

One of the latest cases to date to uphold a state's system of financing public schools arose in Maryland.[187] This case involved a challenge to the constitutionality of Maryland statutes which govern the system of financing public elementary and secondary schools in the State's twenty-four school districts, i.e., in the twenty-three counties of Maryland and in Baltimore City. The litigation focused on the existence of wide disparities in taxable wealth among the various school districts, and the effect of those differences upon the fiscal capacity of the poorer districts to provide their students with educational offerings and resources comparable to those of the more affluent school districts.

The State's public school system was primarily financed by a combination of state and local tax revenues. The State's share of a district's "basic current expenses" was an annual expenditure of $690 multiplied by the number of students enrolled in a district. This foundation

amount was allocated to local districts by counties provided the district levied an annual tax sufficient to provide an amount of revenue for educational purposed equal to the product of the wealth of the county and a uniform percentage determined for each fiscal year. This system, therefore, resulted in the revenue raised for basic current expenses differing by counties based on each county's "wealth" as determined by the assessed valuation of real property, public utility operating property, and net taxable income. The system was intended to "equalize" the differences in local wealth by providing a larger amount of basic current expense aid to school districts with lesser wealth per pupil than to those with greater wealth. In operation, the formula worked as follows: It set a per pupil statutory "foundation" level ($690) which was the minimal base amount that each school district must spend annually per pupil. Of this amount the State paid 55 percent of the first $624 and 50 percent of the remaining $66. The local districts as a group paid the remaining 45 percent of $624, and 50 percent of $66. The actual distribution of the State share among local districts and the percentage of the foundation amount that each must provide from local tax revenues varied in accordance with the district's "wealth." The total number of public school students enrolled in the State was multiplied by $624, and the product of that calculation by 0.45, yielding the first-tier share for all school districts. The total number of students was then multiplied by $66, and that product was multiplied by 0.50, yielding the local districts' second-tier share. The sum of the two--the total contribution of all 24 districts--was then divided by the total wealth of all 24 districts. The resulting percentage was a "uniform tax rate" to be applied by each district to raise its share of the $690 per pupil expenditure. The tax rate applied to each district's wealth per pupil yielded the amount per pupil it must contribute toward the basic current expense of $690; the State paid the balance. Thus, the greater a district's wealth the more the uniform tax rate would raise, and the smaller the State's per pupil contribution; conversely, the less its wealth, the less the uniform rate would yield, and the larger the State's contribution. Each district's share was only the minimum mandated by the State, and each expended considerably more per pupil than the foundation amount. These additional expenditures by the local districts could be made without limitation as to amount without affecting the level of State aid received under the formula.

In addition to the State share of basic current expenses, the State provided an amount equivalent to $100 per student to a school district having a population density of over 8,000 persons per square mile ("density aid"), a criterion met only by Baltimore City. Two-thirds of this amount had to be used for a certain programs for students with special educational needs that resulted from educationally or environmentally disadvantaged environments. This also authorized a State expenditure of $45 per student to qualifying school districts for the same purpose where eligibility for funds was established under Title I of the Elementary and Secondary Education Act of 1965. Other State aid was specially "targeted" to the twelve poorest school districts in the State for use in operating their local systems.

In addition to these appropriations from the State School Fund, the State provided substantially full funding for "categorical aid" to school districts (without adjustment for subdivision wealth) for various educational purposes, including payments for teachers' retirement and social security, educating handicapped children, vocational education and rehabilitation, student transportation costs, school construction costs, and other programs.

The State share of basic current expenses in fiscal year 1980 amounted to 54 percent of the total; the local school districts appropriated 46 percent of the total basic current expenses for the 1980 fiscal year.

In addition to these educational expenditures, each local subdivision spent substantial sums of money for the support of its local schools. Because of differences in assessed property valuations among the subdivisions, the amounts raised through local taxation and spent per pupil varied from district to district, depending upon the district's tax wealth and/or inclination to spend money to enhance the educational resources and opportunities available to its students. These discretionary local expenditures resulted in substantial spending imbalances between the districts--imbalances which were only partially off set by the State's equalization and other aid. Educational offerings in some school districts were therefore considerably greater than in others. That Maryland's system of financing its public schools was dependent in considerable part upon tax revenues raised by the local subdivisions and expended for the support of their local public school systems was entirely clear.

On February 15, 1979, the Boards of Education of Somerset, Caroline, and St. Mary's Counties, and the School Commissioners of Baltimore City, together with taxpayers, students, parents, public officials, and the school superintendents in each subdivision (collectively the plaintiffs), filed a declaratory judgment action in the Circuit Court of Baltimore City. Characterizing their respective school districts as fiscally distressed, the plaintiffs claimed that the State's public school financing system violated the equal protection guarantee of Article 24 of the Maryland Declaration of Rights and Article VIII of the Maryland Constitution which provided, in relevant part:

> Section 1. General Assembly to establish system of free public schools.
>
> The General Assembly, at its First Session after the adoption of this Constitution, shall by Law establish throughout the State a thorough and efficient System of Free Public Schools; and shall provide by taxation, or otherwise, for their maintenance.

Named as defendants in the action were the Comptroller of the Treasury, the State Superintendent of Schools, and, by intervention, Montgomery County, Maryland.

The complaint alleged that because of the insufficiency of school funds caused by the State's discriminatory, unequal, and inadequate school financing system, the plaintiff school boards were unable to meet their constitutional obligations under state equal protection guarantees or under the "thorough and efficient" clause of Section I of Article VIII of the Maryland Constitution. In four separate causes of action, the plaintiffs alleged that the State's public school financing system unconstitutionally discriminated against and disadvantages all students in the State's fiscally distressed school districts by providing them lesser and inadequate educational opportunity; that the system unconstitutionally operated to the particular disadvantage of poor children attending public schools in the fiscally distressed school districts; that Maryland unconstitutionally discriminated against poor school children throughout the State by systematically denying equal educational opportunity to most of them; and that the State's public school financing system unconstitutionally discriminated against residents and taxpayers of Baltimore City by compelling them to impose unparalleled tax rates while still offering only a reduced level of education, a duality which promoted continuing "out-flight" of the City's tax base and threatened the City's fiscal vitality.

In support of their action, the plaintiffs asserted in their complaint that Maryland's school districts varied widely in their taxable wealth and in their fiscal ability to support public education; that under the State's system of financing its public schools, the local school

districts were required to raise from local tax revenues approximately two-thirds of the current expenses needed to operate their school systems; that wealth disparities between the school districts were such that the plaintiff districts were unable to raise revenues comparable to those of the wealthier districts because, at any given tax rate, the revenue yielded per child was substantially less than that yielded in the more affluent school districts; that this was so even if the poorer subdivisions taxed at rates higher than those of the wealthier districts; that an aggravating cause of the reduced school funding capacity of Baltimore City resulted from its "municipal overburden"--a factor endemic to large cities having extreme population densities, great poverty, and high crime rates, which necessitated expenditures of local revenues greater in amount than any other Maryland school district for nonschool governmental services, such as police and fire protection; that the necessity for these greater expenditures for nonschool needs sharply limited the proportion of every locally raised revenue dollar which remained available for public schools; and that the equalization formula did not take Baltimore City's municipal overburden into account but instead erroneously assumed that local tax revenues were equally available for public schools in each school district. The complaint alleged that even though the formula undertook to equalize for differences in local wealth by providing a larger amount of basic current expense aid to school districts with lesser wealth per pupil, the equalization occurred only up to the foundation level of $690 per pupil, which was less than one-half the state-local revenue per child of the average school district in the State; that because of their lower revenue and spending capacity, educational offerings in the fiscally distressed school districts, e.g., quality and quantity of professional staff, class sizes, school facilities, equipment, and supplies, were considerably less than those offered by school districts which were not fiscally distressed; that as a result of the fiscal incapacity of the plaintiff school districts, their students suffered from a diminished level of educational resources; and that the State's public school financing system's heavy dependence on disparate local taxable wealth resulted in substantial differences in educational offerings and resources among the school districts.

The complaint also asserted that poor children in the plaintiff school districts required extra educational assistance to overcome learning disadvantages but received less as a result of the State's discriminatory public school financing system; that families in poor school districts more often suffered low income, low educational attainment, and higher unemployment than in the wealthier districts; that as a result children in poor school districts have learning deficiencies that can only be overcome by costly programs of compensatory education; that conditions associated with poverty impede learning progress; that the equalization formula failed to take into account that it costs substantially more to provide learning opportunities for poorer children; that these needs were not accommodated under the State's system of financing its public schools; that instead the system yielded reduced and below average educational resources to the economically and educationally disadvantaged public school students; that the plaintiff school districts suffered from "educational overburden" in their higher concentration of poor children with special and greater educational needs; that 70 percent of the State's poorest children resided in fiscally distressed school districts with below average taxable wealth, with the result that these children were systematically relegated to below average wealth schools with reduced, unequal, and inadequate educational offerings; and that although Baltimore City levied taxes at a rate higher than any other subdivision in Maryland, it provided below average public school funding to its students.

The disparity in local taxable wealth and expenditure per pupil due to local district, by county, wealth under the Maryland school finance system was similar to other state systems which were judicially challenged before this case was decided in 1983. For example, Maryland's Calvert County had $138,318 of property wealth behind each pupil enrolled on

September 30, 1979; St. Mary's County, Somerset County, Baltimore City, and Caroline County had respectively only $34,939, $32,151, $28,375, and $27,762. The ratio of disparity between Calvert County and Caroline County was 5 to 1. In 1978, Montgomery County had a net per capita income of $7,059, while Somerset County had $2,408. Thus, the maximum fifty percent "piggyback" income tax the subdivisions were permitted to impose raised in Somerset County only about one-third of the per capita amount it raised in Montgomery County. When wealth was measured by a combination of property and income per pupil enrolled on September 30, 1979, Worcester County had $129,850 per pupil while Somerset County, its contiguous neighbor, had only $39,107 per pupil, a disparity ratio of more than 3 to 1. If taxable wealth was defined as total property taxable for county purposes plus net taxable income, the disparity between Calvert County with $127,556 per pupil and Caroline County with $39,229 was also more than 3 to 1.

This disparity was also evidenced when measured by revenue raised by local property taxation. For example, if each subdivision were to tax its property at a rate of $2 per $100 of assessed valuation, Calvert County would raise $2,766 per pupil enrolled on September 30, 1979, while its contiguous neighbor, St. Mary's County, would raise only $699 per pupil; Worcester County would raise $2,397 per pupil while its neighbor, Somerset County, would raise only $643 per pupil; and Baltimore City and Caroline County would raise only $568 and $555 per pupil, respectively. In terms of actual per pupil expenditures, it was also shown that, for fiscal year 1979, a child in the wealthiest subdivision of the State had approximately twice the amount spent on his education as a child in the poorest subdivision. For example, the per pupil expenditure in Montgomery County was $2,328 while Caroline County spent only $1,498 per pupil.

Accepting the finance data as factual, the Court of Appeals of Maryland first considered the meaning of Section 1 of Article VIII of the Maryland Constitution which requires that the General Assembly establish a "a thorough and efficient" system of free public schools throughout the State and "provide by taxation, or otherwise, for their maintenance." After an extensive review of the historical records associated with the establishment of the Education Article of the Maryland Constitution, the court concluded that:

> It is manifest from the history underlying the adoption of Article VIII of the 1867 Constitution, and from the consistent interpretation and application of its provisions by the legislative and executive branches of the State government for more than one hundred years, that the "thorough and efficient" language of Section 1 does not mandate uniformity in per pupil funding and expenditures among the State's school districts. The words of Section 1 require no more than that the General Assembly, by law, establish a "thorough and efficient" system of free public schools throughout the State, funded by taxation or otherwise. That the general language of this constitutional directive constituted a clear departure from the specific and detailed education article provisions contained in the 1864 Constitution is clear. It is equally clear that nothing in the provisions of the newly adopted Section 1 compelled the legislature to enact a law requiring that the funds raised to support the public school system be apportioned in any particular way. Nor did the provisions of Section 1, either explicitly or implicitly, inhibit local subdivisions from spending locally generated tax revenues for public school purposes in supplementation of amounts to be received from the state school fund. Obviously, in light of the historical evidence, the words "thorough and efficient," in the context of their usage in Section 1, are not the equivalent of "uniform." Nor do these

> words impose upon the legislature any directive, in its establishment of the public school system, to so fund and operate it that the same amounts of money must be allocated and spent, per pupil, in every school district in Maryland. To concluded that a "thorough and efficient" system under Section 1 means a full, complete and effective educational system throughout the State, as the trial judge held, is not to require a statewide system which provides more than a basic or adequate education to the State's children. The development of the statewide system under Section 1 is a matter for legislative determination; at most, the legislature is commanded by Section 1 to establish such a system, effective in all school districts, as will provide the State's youth with a basic public school education. To the extent that Section 1 encompasses any equality component, it is so limited. Compliance by the legislature with this duty is compliance with Section 1 of Article VIII of the 1867 Constitution.[188]

As viewed by this court, the State had undertaken to provide a thorough and efficient public school education to its children in compliance with its constitutional mandate. The court refused to recognize the claim that the State must equalize expenditures and, so long as efforts are made to "minimize the impact of undeniable and inevitable demographic and environmental disadvantages on any given child," which the Maryland system did, it satisfied the "thorough and efficient" mandate.

In considering the claim that the school finance system violated the equal treatment provision of Article 24 of the Maryland Declaration of Rights, the court rejected the argument that the strict scrutiny standard should be applied in this case. Since the court refused to recognize that the students living in property-poor school districts comprised a "suspect class," or that they were experiencing an impairment of a "fundamental right" to an education, the court concluded that the school finance system could be declared invalid "only if the means chosen by the legislature are wholly irrelevant to the achievement of the State's objective."[189] In determining that the Maryland system of public school finance was reasonably related to a legitimate State purpose, the court concluded that:

> . . . Maryland's public school system has been financed by a combination of local tax revenues and State contributions virtually throughout its entire history. Although the General Assembly has never explicitly stated the object of its public school financing system, it is readily apparent that a primary objective is to establish and maintain a substantial measure of local control over the local public school systems--control exercised at the local level through influencing the determination of how much money should be raised for the local schools and how that money should be spent. We think the legislative objective of preserving and promoting local control over education is both a legitimate state interest and one to which the present financing system is reasonably related. Utilizing property taxation to partly finance Maryland schools is, therefore, rationally related to effectuating local control over public schools.[190]

In a concluding statement, this court identified what it perceived to be the issues to be involved and not to be involved in this case. In so doing, the Maryland court briefly summarized what had been explicitly stated or implicitly implied by the other state courts which had upheld the constitutionality of their state's public school finance systems. As stated by this court:

The central role of education in our society is, of course, universally accepted . . .the issue in cases challenging the constitutionality of state public school finance systems is not whether education is of primary rank in the hierarchy of societal values, for all recognize and support the principle that it is. Nor is the issue whether there are great disparities in educational opportunities among the State's school districts, for the existence of this state of affairs is widely recognized. Neither is the issue in this case whether it is desirable, as a matter of Maryland's social policy, that the same mathematically precise amount of money should be spent on each child's public school education, without regard to the wealth of the subdivision in which the students reside. The issue is whether anything in the constitution, state or federal, requires such a result or prohibits in any county, regardless of wealth, from spending any more. Necessarily, we approach these issues with "a disciplined perception of the proper role of the courts in the resolution of our State's education problems, and to that end, more specifically, judicial discernment of the reach of the mandates of our State Constitution in this regard." The expostulations of those urging alleviation of the existing disparities are properly to be addressed to the legislature for its consideration and weighing in the discharge of its continuing obligation to provide a thorough and efficient statewide system of free public schools. Otherwise stated, it is not within the power or province of members of the Judiciary to advance their own personal wishes or to implement their own personal notions of fairness under the guise of constitutional interpretation. The quantity and quality of educational opportunities to be made available to the State's public school children are a determination committed to the legislature or to the people of Maryland through adoption of an appropriate amendment to the State Constitution.[191]

CHAPTER VI

STATE AID SYSTEMS JUDICIALLY OVERTURNED

Not all judicial challenges to state aid to public school systems which followed Serrano I and Rodriguez were upheld. Courts of appeals in nine states found the state aid systems in their respective states to violate constitutional mandates under the state's education and/or equal protection clauses. While the nine state school finance systems which were overturned did not differ significantly from those which were upheld, i.e., a heavy reliance on local property taxation as a major factor in the amount which could be expended on the education of each student, the state courts in these cases typically rejected the defendants' claims that such systems were rationally related to a state purpose such as maintaining local control of education. The factual situations, therefore, were similar in states that had upheld and overturned school finance systems. In addition, the education and equal protection articles of the respective state constitutions did not differ significantly. Each state appeals court, however, ruled that the constitutional mandates were violated by the school finance system in operation at the time of each challenge.

New Jersey

New Jersey experienced ten legal actions challenging all or part of that state's school finance system between 1971 and 1985. The original action was filed in the Superior Court of Hudson County, New Jersey, in 1970. This trial court decision found that the New Jersey system of financing public education, which relied on local taxes to pay approximately 67 percent of public school costs and which led to great disparity among school districts with respect to their ability to finance an adequate education, denied the students and taxpayers in low real property districts equal protection by imposing unequal burdens for the common state purpose of providing public education. On appeal, the Superior Court of New Jersey, Law Division, upheld the trial court's decision.[192]

The school finance system in effect in New Jersey at the time of this challenge involved a funding scheme primarily dependent upon local real property taxes augmented by various forms of "state aid," such as "formula aid," transportation aid, school building aid, lunch aid, etc., and federal aid. The "foundation program," consisting principally of minimum aid plus equalization aid, was referred to as "formula aid" because it was based on a formula.

Under the foundation program formula, each district received equalization aid of $400 per pupil less its "local fair share," and in any case not less than $75 (minimum aid) per pupil. All districts received another $25 per pupil. Local fair share was defined as the equivalent of the amount of revenue that could be raised locally with a tax rate of $1.05 per $100 of equalized valuations.

Equalized valuations was the term applied to the true market value of taxable real property in a district as determined by the State Director of the Division of Taxation through studies of recent sales. Under this procedure, aggregate assessments in each taxing district were

adjusted to produce an equalized or true market value for the district. Equalized valuations were used to establish uniformity in the distribution of state aid despite unequal assessing practices.

Thus, under the foundation program, every district received $100 per pupil, plus the difference, if any, between $325 and the local fair share (plus $27, if the district was in one of the six largest cities). By 1969-1970, however, every school district in the State had annual budgets which exceeded the level "guaranteed" by the foundation program. The statewide average was over $800 per pupil. Two years later, the statewide average expense per pupil was $1,009. All districts, therefore, had to finance the excess expenditure by local taxes, in addition to the local fair share. Some districts, of course, whose local fair share was high, received only the minimum aid of $100 per pupil.

While this litigation was pending, the New Jersey Legislature passed a law referred to as the "Bateman Act." The foundation plan was still relevant, however, because the Legislature funded the Bateman Act for 1971-72 at a "20 percent" level, defined as "that amount which would have been paid in 1971-72 under the foundation plan, plus 20 percent of the difference between that aid and Bateman Act aid if Bateman were fully funded." For the next year, 1972-73, this ratio had been raised to 40 percent. The increase in the formula aid to property-poor school districts under the Bateman Act was negligible in most school districts. Some property-poor school districts did, however, receive increases under this Act. Districts with a high percentage of children receiving aid to families with dependent children (AFDC) were benefited the most by this Act's weighting for such children in the state aid formula. In reality, however, the school districts continued to raise about 67 percent of their revenue from local property taxes, with only 28 percent being supplied by the State and 5 percent from federal funds. If the Bateman Act had been fully funded, it would have "significantly improved upon the foundation plan in equalizing local revenue-raising power."[193] Even with the impact of the Bateman Act, the data illustrated that New Jersey had 14 school districts spending less than $700 per pupil per year and 16 district spending over $1,500 per pupil. Four districts were identified as having equalized valuations per pupil of under $10,000 and 42 districts had an equalized valuation in excess of $90,000. The result of such discrepancies was shown by comparing select characteristics of school districts which varied directly with local equalized valuation. For example, Millburn, which had a $1.43 tax rate compared to $3.69 in Newark, had more teachers per pupil than Newark, spent more for teacher' salaries (1969-70) per pupil ($685 to $454), and had more professional staff per weighted pupil (61 to 53). In Camden County, Haddonfield and Audubon Park compared as follows: 18.9 to 27.2 pupils per teacher, $478 to $293 in teachers' salaries (1969-70) per pupil, and 55 to 44 in professional staff per 1,000 weighted pupils. Thus, Haddonfield got more with a $2.33 tax rate than Audubon Park with a $5.59 tax rate. In Monmouth County, Deal and Union Beach compared as follows: 14.8 to 26 pupils per teacher, $717 to $328 in teachers' salaries (1969-70) per pupil, and 74 to 42 in professional staff per 1,000 weighted pupils. Winfield Township in Union County had the lowest equalized valuation per pupil for 971-72 was $1,253, which was well above the state average. This included approximately $500 per pupil in state aid. In 1971 the equalized school tax rate was $15.11 and the total equalized municipal tax rate was $20.14. This represented an extra-ordinary tax effort. It meant that a taxpayer in Winfield Township paid an amount equal to the value of his residence every seven years just to raise money for school purposes, or every five years to raise money for school and all other municipal services.

In its analysis of the constitutionality of this school finance system, the court considered Article VIII, Section IV, Paragraph 1 of the New Jersey Constitution which stated:

> The Legislature shall provide for the maintenance and support of a thorough and efficient system of free public schools for the instruction of all children in the State between the ages of five and eighteen years.

The court found that the intent of this constitutional mandate was to make the provision of a thorough and efficient education for all children, wherever located within the State, an obligation of the state legislature. It also found that, although school districts may be created and classified for appropriate legislative purposes, the state school tax, even though assessed and levied locally upon local property, was a state tax. From this perspective of the state's obligation for public schools, the court found that:

> . . . It is clear that a "thorough" education is not being afforded to all pupils in New Jersey. However, the Bateman Act would probably afford sufficient financing for a thorough education if that act were fully funded. In an area as difficult and costly as education, the judiciary would not invalidate a statue simply because all the funds necessary to fulfill its objectives were not made available in the first year or two of operation. . . where public monies are involved, modest objectives must be allowed even though more pervasive ones would be welcome. A statue may not be invalidated merely because it would also be reasonable to do more. This is not to say that a stature will be left intact without a reasonable expectation that the fundamental constitutional demand for a thorough education will be achieved in the near future. A court would consider at least taking such steps as are necessary to allocate available resources in order to more closely approximate the constitutional demand. As a first step, certainly, the provision affording minimum support aid to each district regardless of wealth and the save harmless provision of the Bateman Act should yield to the state constitutional purpose.[194]

The court concluded, therefore, that the Bateman Act, as it was being funded, did not meet the constitutional standard of a thorough education for all children in the State. Fully funded, however, this Act was viewed as "probably" being able to achieve the constitutional requirement. At its present funding, however, the court concluded that it did not and that it also discriminated against pupils and districts with low real property wealth and against taxpayers by imposing unequal burdens for the purpose of funding public schools which denied the equal protection guarantee of the New Jersey Constitution.

In refusing the argument that the school finance system was justified as a legitimate state's interest in maintaining local control, the court stated:

> No compelling state interest justifies New Jersey's present financing system. It is doubtful that this system even meets the less stringent "rational basis" test normally applied to the regulation of state fiscal or economic matters. While local control is desirable, discriminations should not be tolerated if they are not necessary for achieving the stated purpose. A finance system can be devised for New Jersey which affords equal protection to all pupils without precluding local control over public education. The invidious disparities cannot be justified by any overriding state purpose. Distribution of school resources according to the chance location of pupils cannot be tolerated . . .[195]

In addition to the education and equal protection arguments applied in this case, the court also considered the claim that the system violated the constitutional mandate that all property must be assessed for taxation under general laws and by uniform rules. In also finding that the New Jersey school finance scheme violated this constitutional provision, the court concluded that:

> There is no compelling justification for making a taxpayer in one district pay a tax at a higher rate that a taxpayer in another district, so long as the revenue serves the common state educational purpose. Moreover, education is too important to the State as well as the children of the State to be largely controlled by the haphazard distribution of real property wealth. The State and its courts have a special solicitude for the welfare of children since they have little control over their own destinies. . . .
>
> Education serves too important a function to leave it also to the mood--in some cases the low aspirations--of the taxpayers of a given district, even those whose children attend schools in the district. The uncertainty of raising sufficient local funds for school purposes is the very hazard that the uniform state tax was designed to meet under the Free School Law of 1871. . . . The Education Clause and the equality provisions of the New Jersey Constitution require a more certain and uniform basis than our statutory scheme now provides for the thorough education of each child.[196]

In its final comments, this court stated:

> The present system of financing public elementary and secondary schools in New Jersey violates the requirements for equality contained in the State. . . Constitution. The system discriminates against pupils in districts with low real property wealth, and it discriminates against taxpayers of the same class. The present equalizing factors in the law are not sufficient to overcome inequities in the distribution of school funds and tax burdens.
>
> The present financing system is declared unconstitutional; but this declaration shall operate prospectively only and shall not prevent the continued operation of the school system and existing tax laws and all actions taken thereunder. This declaration shall not invalidate past or future obligations (such as school bonds, anticipation notes, etc.) incurred under the provisions of existing school laws and tax laws. Said laws shall continue in effect unless and until specific operations under them are enjoined by the court. To allow time for legislative action, such operations shall not be enjoined prior to January 1, 1974, except that if a nondiscriminatory system of taxation is not enacted by January 1, 1973, then from and after that date no state monies shall be distributed to any school districts pursuant to the "minimum support aid" provisions and the save-harmless provisions of the Bateman Act . . . All funds that are thereby set free shall be distributed by appropriate state officials in a manner that will effectuate as far as possible the principles expressed herein; more specifically, these funds shall be applied to raise guaranteed valuations to the highest level that a proportionate distribution of funds will permit, utilizing the remaining provisions of the Bateman Act.

> The court will retain jurisdiction for such modification or further order as may be required.
>
> Nothing herein shall be construed as requiring the Legislature to adopt a specific system of financing or taxation. The Legislature may approach the goal required by the Education Clause by any methods reasonably calculated to accomplish that purpose consistent with the equal protection requirements of law.[197]

In an additional opinion issued two months after this decision, the same court refused to postpone the operative date for prohibiting the distribution of state funds under this constitutional system.[198] While it was argued that the date established by the court did not provide sufficient time to correct "practical difficulties" in correcting the school finance system, the court found that it would not be "legally impossible" and upheld the court imposed operative date of one year to bring this system into compliance with the court's decision.[199]

On appeal to the Supreme Court of New Jersey, the lower court's decision that the school finance system was unconstitutional was affirmed.[200] The Court found that the State had failed to define in some discernible way the state's obligation to provide a thorough and efficient education and to ensure that all children had an equal opportunity to obtain such an education. The court specified in general terms the standard for determining whether the constitutional obligation had been met:

> The constitution's guarantee must be understood to embrace that educational opportunity which is needed in the contemporary setting to equip a child for his role as a citizen and as a competitor in the labor market.[201]

Although the Supreme Court refused to identify education as a fundamental right, concern was shown that variation in dollar input per pupil created unconstitutional discrepancies in the education services provided by school districts. The system of financing public schools was found to be in violation of the "thorough and efficient" requirement of the State Constitution. The court used a "heightened" version of the strict scrutiny test of the Equal Protection Clause based on the "concern" about equal educational input in the State. Because of this concern, the court found the New Jersey public school funding system unconstitutional.

New Jersey's funding system, according to the evidence, had fiscal disparities in student performance. Until the 1972-73 school year, New Jersey did not employ a statewide educational testing program which made precise interdistrict comparison difficult. However, a leading New Jersey educator testified that about 20 percent of New Jersey's school districts were furnishing inadequate education. There was a strong positive correlation between pupil expenditure and student performance.

The court found evidence of substantial fiscal disparity among New Jersey's 600 school districts, a direct relationship between property values and expenditures per pupil, and an inverse relationship between expenditures and local tax rates. On the basis of this evidence, the court concluded that differential resources and spending adversely affected the quality of education provided by poor districts.

With respect to the quality of education, Justice Weintraub concluded:

> Although we have dealt with the constitutional problem in terms of dollar input per pupil, we should not be understood to mean the state may not recognize differences in area costs, or in need for additional dollar input to equip classes of disadvantaged children for the educational opportunity. . . . We agree with the trial court that relief must be prospective.[202]

Two months after issuing this decision, the same court, after having received further arguments, moved the operative date for the State to come into compliance with the court's findings forward by two years.[203] While retaining jurisdiction in this case, the court refused to rule on the question that, if the Legislature did not adopt a school finance system that was constitutional under the court's prior decision, the court could order the distribution of appropriated moneys toward a constitutional objective not withstanding the legislative directions. Two years later, this court was faced with the situation that the operative time established by the court had expired and the Legislature, while making efforts to correct the system, had not enacted legislation which would have brought the school finance system within the identified constitutional mandates.[204] The court set down a nine-point order which, in relevant part, permitted additional arguments to be presented on the issue of:

> The method of determination of the definition of "a thorough and efficient system of free public schools," of the translation of that definition into financial terms and of the application thereof (including whether such definition should be administratively applied to each school district separately, to groups of districts based on particular characteristics or equally to all).[205]

Four months later, the Supreme Court of New Jersey issued another decision indicating, in part, that it was unwilling to "intrude" into the legislative process and that it was the court's function to appraise compliance with constitutional mandates to furnish a thorough and efficient system of free public schools, but not to legislate a specific educational system.[206] While the court recognized its authority to enjoin the distribution of state aid under the present unconstitutional system, it concluded that such an action would have a significantly "harmful impact" on educational programs and refuses to enjoin state aid distribution entirely. The court did, however, order a provisional remedy for the 1976-77 school year. This order provided that minimum support aid and save-harmless funds could not be distributed under the unconstitutional school finance system but would be in accordance with the incentive equalization aid formula in order to effect relief from the unconstitutional system. This incentive equalization aid formula, advocated to the court by Governor Cahill, involved specification of specific amounts of allocated funds to specific budget categories. The minimum support aid would, therefore, provide $150 per resident weighted pupil in 1975-76, and the save-harmless aid would assure that every district would receive no less aid for current expenses and building costs that it received in the 1972-73 school year. Essentially, this system fixed a guaranteed equalized assessed valuation per weighted pupil of $43,000, and if the district's actual corresponding valuation per pupil multiplied by the number of pupils was less than the guaranteed valuations per pupil multiplied by the same number, the district would receive state aid to the extent of the difference, multiplied by the net operating school tax rate. If the actual valuations were more than the guaranteed valuation, no formula aid would be given. As identified by the court:

> We are in accord with the Governor and plaintiffs as to the effect of redistribution of minimum support and save-harmless aid in accordance with the 1970 incentive equalization aid formula in tending to subserve the goal of equality of educational opportunity. The two named items leave existing arbitrary ratios of tax resources

per pupil unaffected. The formula, on the other hand, in effect places all districts whose actual equalized valuations are below the guarantee-level on the same per-pupil basis in respect of supporting tax resources. The higher the guarantee-level the more districts come under the umbrella of such equality. Since reallocating minimum support and save-harmless equality of supporting resources per-pupil is fostered in that way.[207]

One year later, the Supreme Court of New Jersey was again called upon to further consider its 1975 decision.[208] In this opinion, the court considered the constitutionality of New Jersey's "Public School Education Act of 1975." The court found that this Act, if it was fully funded, would likely meet the constitutional requirement of a thorough and efficient system of free public schools in New Jersey. Legislative inaction, however, failed to fully fund this Act. In light of this legislative inaction, the court enjoined every public officer--state, county or municipal--from expending any funds for the support of any public school unless there was "timely legislative action." As stated by the court:

> The continuation of the existing unconstitutional system of financing the schools into yet another school year cannot be tolerated. It is the Legislature's responsibility to create a constitutional system. As we stated in Robinson I,. . ."The judiciary cannot unravel the fiscal skein." The Legislature has not yet met this constitutional obligation. Accordingly, we shall enjoin the existing unconstitutional method of public school financing. . . We therefore order as follows:
> On and after July 1, 1976, every public officer, state, county or municipal, is hereby enjoined from expending any funds for the support of any free public school. This injunctive order shall not apply to:
>
> 1. Payment of principal, interest and redemption of existing school bonds, anticipation notes and like obligations.
>
> 2. The cost of maintenance and security of school properties.
>
> 3. The payment of contractual obligations from capital construction, necessary repairs and like expenses necessary for the protection of school properties.
>
> . . .
>
> This injunction will not become effective if timely legislative action is taken providing for the funding of the 1975 Act for the school year 1976-1977, effective July 1, 1976, or upon any other legislative action effective by that date providing for a system of financing the schools in compliance with the Education Clause of the Constitution.[209]

Following this decision, the New Jersey Legislature enacted legislation which permitted full funding of the Public School Education Act of 1975 and the court dissolved its injunction.[210]

This was not, however, the last of the challenges to the New Jersey school finance system. A group of children attending public schools in property-poor school districts brought another action claiming that the 1975's Act's plan for funding public education also violated the Education Clause of New Jersey's Constitution.[211] The 1975 Act defined the goal of a

thorough and efficient educational system: "Free public schools shall . . . provide to all children in New Jersey, regardless of socioeconomic status or geographic location the educational opportunity which will prepare them to function politically, economically and socially in a democratic society." The Legislature specifically acknowledged the major elements of the state's obligations, as follows:

a. Establishment of educational goals at both the State and local levels.

b. Encouragement of public involvement in the establishment of educational goals;

c. Instruction intended to produce the attainment of reasonable levels of proficiency in the basic communications and computational skills;

d. A breadth of program offerings designed to develop the individual talents and abilities of pupils;

e. Programs and supportive services for all pupils especially those who are educationally disadvantaged or who have special educational needs;

f. Adequately equipped, sanitary and secure physical facilities and adequate materials and supplies;

g. Qualified instructional and other personnel;

h. Efficient administrative procedures;

i. An adequate State program of research and development; and

j. Evaluation and monitoring programs at both the State and local levels.[212]

While the court found that this definition of a thorough and efficient education would meet the constitutional mandate, assuming sufficient funding for the Act, the plaintiff students claimed that under the 1975 Act, the State had contributed no more than about 40 percent of all school operating costs, and that the majority of all public school expenditures were still being derived from local property taxes. They contended that substantial disparities in local property wealth continued to exist among school districts and that this had resulted in substantial disparities in per pupil expenditures among districts. They argued that such disparities had actually widened since the 1975 Act went into effect and that the absence of financial resources in property-poor school districts, coupled with the availability of much greater resources for children attending school in average and property-rich school districts, deprived them of a thorough and efficient education and denied them equal protection of the law. The defendant state officials, while conceding the continued existence of great disparities among school districts in terms of moneys expended on a child's education, argued that any educational inequities in the plaintiffs' school districts were not financial in origin and not attributable, in large part, to the local school board's ineffective management of their educational system and the plaintiffs' failure to invoke statutory remedial provisions through an administrative tribunal. In deciding not to rule on the claims presented by the plaintiff students in this case, the court stated that:

> It is apparent that the myriad, extraordinary, and complex factual issues presented in this case will cause the litigation to turn on the import of proofs that demand close and considered examination and evaluation. In particular, in the far-ranging context of the claims and defenses, the issues of educational quality and municipal finance may be more effectively presented, comprehended, and assessed by a tribunal with the particular training, acquired expertise, actual experience, and direct regulatory responsibility in these fields. For these reasons the court has repeatedly acknowledged and approved the administrative handling of educational controversies that arise in the context of constitutional and statutory litigation, including evaluation of local educational problems, design of remedial measures, and supervision of the program implementation. . . .
>
> We therefore conclude that this case can and should be considered in the first instance by the appropriate administrative agency. This action is proper because the ultimate constitutional issues are especially fact-sensitive and relate primarily to areas of educational specialization. Accordingly, the matter is to be remanded and transferred to the Commissioner of Education. Under the circumstances, we do not deem it necessary to dismiss the complaint. . . . This will expedite the litigation by enabling the parties to rely on their existing pleadings, as well as on other relevant matters of record that have been developed in the course of the judicial proceedings.[213]

At the present time, therefore, the constitutional challenge to the present New Jersey school finance system, the 1975 Act, remains unanswered but continues to be under consideration in administrative proceedings which may eventually be returned to the Supreme Court of New Jersey.

Kansas

In 1976, the state system for financing Kansas public schools was found to violate the state's constitutional mandates concerning education.[214] Under the Kansas Constitution, education was addressed, in terms of the issues involved in this case, in three primary sections:

> The legislature shall provide for intellectual, educational, vocational, and scientific improvement by establishing and maintaining public schools, educational institutions and related activities which may be organized and changed in such manner as may be provided by law (Article 6, p. 1.).
>
> Local public schools under the general supervision of the state board of education shall be maintained, developed and operated by locally elected boards. When authorized by law, such boards may make and carry out agreements for cooperative operation and administration of educational programs under the general supervision of the state board of education, but such agreements shall be subject to limitation, change or termination by the legislature (Article 6, p. 5.).
>
> The legislature shall make suitable provision for finance of the educational interests of the state. . . . (Article 6, p. 6[b])

In implementing this constitutional mandate, the Kansas Legislature, in 1973, enacted the "School District Equalization Act." This Act provided for a complicated formula by which the State Board of Education was authorized to distribute money from the state school district equalization fund to the various local school districts. The Act was an effort to provide state support for common schools on the basis of local need. Entitlement to state funds under a statutory formula which took into consideration district wealth and the amount of local "budget per pupil" as compared to the statewide median budget per pupil. The local school district would adopt a budget within limitations of the School District Equalization Act and divide the budget by enrollment to arrive at the budget per pupil. This district budget per pupil was divided by the "norm budget per pupil," which was a median, for the category of the particular school district in the statutory classification according to enrollment, and the result was multiplied by 1.5 percent to arrive at a "local effort rate." The local effort was determined by the aggregate of: (1) multiplying the local effort rate by the district wealth; plus (2) the district's share of intangible taxes; plus (3) the district's share of the computed county foundation tax receipts. After subtracting the "local effort" deductions, the balance remaining to finance the budget, if any, constituted entitlement for receipt of funds from the state school district equalization funds.[215]

Evidence in this case indicated that, in the 1973-74 school year, the 309 school districts in Kansas had different operating expenditures per pupil which ranged from a low in Galena of $609.23 per pupil with an enrollment of 975 pupils to a high in Kendall of $2,210.68 per pupil with an enrollment of eighty-five pupils. The data also indicated that local school district levies necessary to maintain the schools, after considering state equalization monies for 1973, would vary from a low of 13.69 mills in the Moscow district to a high of 43.87 mills in the Beloit district. In addition, it was stipulated that distribution of equalization funds in the 1976-74 school year under the formula in the 1973 Act would vary from zero in several districts to a high of 77 percent of the total operating budget of Elwood.

It was held by the Kansas court that the Act resulted in unequal benefits to certain school districts and an unequal burden of ad valorem school taxes on taxpayers in various districts with no rational classification or basis. It was further held that this provision for state financing of schools was not sufficient to enable the plaintiff school districts to provide a fundamental education for students within their respective districts on a rationally equal basis with students of other school districts within the State as required in the State Constitution.

An unusual factor involved in this case was an amendment to the 1973 School District Equalization Act in 1975 while this case was in progress. In this 1976 decision, the court relied on the 1973 Act and declared it to be unconstitutional. The court was not able to determine the constitutionality of the 1975 amendments to the school finance system and remanded the case for reconsideration at the trial court level for further hearings.

Wisconsin

In Wisconsin, a class action suit was brought seeking a declaratory judgment that the state's "negative-aid " provisions of the school finance statutes, by which certain school districts would be required to pay a portion of their locally raised property tax revenue into the general state fund for redistribution to other school districts, was unconstitutional.[216] This challenge was fundamentally based on two claims: that the state aid system violated the Wisconsin constitutional provision regarding education, and that the negative-aid provision violated the Wisconsin Constitution's rule governing uniform taxation.

Article X, Section 3, of the Wisconsin Constitution provided:

> District schools; tuition; sectarian instruction; released time. SECTION 3 [As amended April 1972] The legislature shall provide by law for the establishment of district schools, which shall be as nearly uniform as practicable, and such schools shall be free and without charge for tuition to all children between the ages of 4 and 20 years; and no sectarian instruction shall be allowed therein; but the legislature by law may, for the purpose of religious instruction outside the district schools, authorize the release of students during regular school hours.

Under this constitutional provision, the Wisconsin Legislature enacted what was termed "shared cost" in the statutes establishing the state aid computation formula. "Shared cost" was the cost of operation, minus operational receipts and amounts received, plus the principal and interest payments on long-term indebtedness and annual capital outlay, for the current school year. The sum of the principal and interest payments on long-term indebtedness and annual capital outlay included in shared cost was not to exceed $100 per pupil. Any amount contributed by the school district to provide food service programs for the elderly was not to be included.

In computing state aid for a school district, that portion of its shared cost per pupil which was more than 10 percent above the average per pupil cost for the previous year, as determined by the State Superintendent, was to be excluded. The primary guaranteed valuation was $71,200 in the 1973-74 school year and $75,500 thereafter. The secondary guaranteed valuation was an amount rounded to the nearest $100 determined by dividing the equalized valuation of the State by the number of pupils in the State. If the net amount computed under the formula resulted in a negative sum, that amount was constituted as the negative-aid payment due.

The establishment of different primary and secondary guaranteed valuations for school districts operating only high school grades (9-12) caused a reduction in the positive aid such districts might receive. The increase in negative aid was to encourage districts to operate both elementary and secondary grades (K-12).

The statute contained a district power equalization factor based upon the equalized valuation of real estate for taxation purposes located within each district. As a result of the introduction of a district power equalization factor into the procedure for financing school districts, certain of those districts would not receive any state aid. Instead, they would be required to pay a portion of their property tax revenue into the general state fund to ultimately be redistributed to other school districts in the State. The districts so required to make payment into the state fund were known as "negative-aid districts."

This school finance formula replaced Wisconsin's "foundation plan" of educational financing which was in effect from 1949-1973. Under the foundation plan, a district above the guaranteed valuation received no state aid under the equalization formula but received a flat grant aid payment from the State. The new aid formula purported to provide equal tax dollars for educational purposes from equal tax effort regardless of the disparity in tax base. Thus, if the actual cost per pupil were precisely the same in each of the approximately 450 school districts, the actual mill rate for education revenue would be the same in each district of the same classification.

The petitioners in this case included five negative-aid districts, residents and taxpayers in negative-aid districts, and parents of children who attended public schools within those districts. In responding to their first claim based upon the educational provision of the Wisconsin Constitution, the court found that the legislature had a duty to provide for the establishment of district schools, that such schools were to be "free and without charge for tuition to all children between the ages of 4 and 20 years."[217] As viewed by the court, since the Legislature had provided these factors for each child in the State, the constitutional requirement had been complied with. As further stated by the court, it was the duty of the Legislature to determine what uniformity was "practicable" and not the courts.

The court also concluded, however, that although the requirement that all districts shall be "as nearly uniform as practicable" did not mean that an equal opportunity for education mandated an equal dollar expenditure per pupil or the equalization of the revenue raising power of the various school districts, that if the means chosen to accomplish the constitutional mandate violated other provisions of the constitution, it may be found invalid. The court then held, in a three-to-two decision, that the required negative-aid payment to the state fund of a portion of tax revenue raised by school districts for redistribution by the state to positive-aid districts violated the Wisconsin Constitution provision that district schools shall be uniform.

Justice Connor T. Hansen, speaking for the majority, reviewed the state statutes which contained a district power equalization factor based upon the equalized valuation of real estate for taxation purposes located within each school district. He decided that the strict scrutiny standard should be applied to the negative-aid classification. It was the court's opinion that the classification established a strong incentive for taxpayers in negative-aid districts to spend less per pupil than taxpayers in positive-aid districts. The court concluded that, regardless of the merits of the legislative enactments or the worthiness of the cause, the State should not compel one school district to levy and collect a tax for the direct benefit of other school districts or for the sole benefit of the State. The Supreme Court of Wisconsin held, therefore, that the negative-aid provision of the school finance formula, while not violating the educational mandate established in the Wisconsin Constitution, did violate the constitutional mandate of uniform taxation.

California

In Serrano II, a modification of Serrano I, decided on February 1, 1977, plaintiffs charged that the California system of public school finance for elementary and secondary schools violated the equal protection guarantee of the state constitution by conditioning availability of school revenues upon district wealth with resultant disparities in school revenue and making the quality of education dependent upon the level of district expenditure, notwithstanding the contention that the state constitution expressly authorized essential elements of the system.[218]

The decision in Serrano I was primarily directed to the sufficiency of allegations of the complaint to state a cause of action and contemplated full trial proceedings for the proof of such allegations. Nevertheless, the case attracted the immediate attention of the California Legislature. As a result, the Legislature passed two bill (Senate Bill No. 90 and Assembly Bill No. 1267) which, upon becoming law during the pendency of the Serrano II trial proceedings, brought about certain significant changes in the system of public school finance then under judicial scrutiny.

The changes brought about by the passage of S.B. 90 and A.B. 1267, while significant, did not propose to alter the basic concept underlying the California public school financing system. That concept, the "foundation approach," attempted to insure a certain guaranteed dollar amount for the education of each child in each school district, and to defer to the individual school district for the provision of whatever additional funds it deemed necessary to the furtherance of its particular educational goals. The mechanisms by which this concept was implemented prior to the adoption of S.B. 90 and A.B. 1267 were basically four: (1) basic aid, (2) equalization aid, (3) supplemental aid, and (4) tax rate limitations and overrides. The new law retained three of these, the element of supplemental aid being discontinued. The basic-aid component remained the same, i.e., $125 per ADA. Thus it was fundamentally through adjustments and alterations in the remaining two areas--equalization aid and tax rate limitations and overrides--that the Legislature sought to bring the system into constitutional conformity.

Perhaps the most dramatic aspect of the new law was a substantial increase in the foundation level. For the fiscal year 1973-74 this figure, which constituted the minimum amount per pupil guaranteed to each district by the state, was in general raised for elementary school districts from the previous level of $355 per ADA to the sum of $765 per ADA, and for high school districts from $488 to $950 per ADA. Corresponding increases were provided for small schools and areawide foundation programs were retained. Provision was also made to offset the so-called "slippage factor" which had been the result of yearly increases in the assessed valuation of real property within the districts (leading to an increase in the amount of local contribution through application of the "computational tax rate" and a corresponding decrease in state contribution). Thus a yearly increase in the foundation level of approximately 7 percent for the first three years and 6 percent thereafter was prescribed. At the same time, however, the "computational tax rate" was raised from $1 to $2.23 at the elementary level and from $.80 to $1.64 at the high school level.

The second major aspect of the new program involved the creation of "revenue limits," or limitations on maximum expenditures per pupil in each school district exclusive of state and federal categorical support and of revenue generated by permissive override taxes. These provisions generally allowed a district without a voted override to levy taxes at a rate no higher than would increase its expenditures per pupil over 1972-73 base revenues by a permitted yearly inflation factor. A district having a school tax rate which produced revenues in excess of foundation levels would receive inflation adjustments which decreased in magnitude as those revenues rose above foundation levels. On the other hand, a district having base revenues which, when added to the full inflation allowance, did not reach the foundation level, could increase its revenues by up to 16 percent of the preceding year's revenue limit per ADA.

The combination of the foregoing rate limitation structure and the ever-advancing foundation levels would, it was contemplated, produce a phenomenon known as "convergence." While poorer districts could move with comparative rapidity toward the rising foundation levels, richer districts, due to the diminished inflation adjustment permitted them, would increase their revenue bases at a much slower rate. This prognosis was complicated, however, by the fact that district revenue limits applied only to revenue generated by the maximum general purpose tax rate available to a district in the absence of voter approval. Such limitations might be exceeded as before if a majority of the voters in the district voted an override. Permissive overrides (i.e., overrides which can be imposed without voter approval) were also authorized to raise revenue for certain special purposes, such as capital outlay.

The California system of public school finance, following the adoption of Senate Bill 90 and Assembly Bill 1267, continued to be based upon the foundation concept. Although there had been substantial increases in foundation levels, those increases, considered alone, did not eliminate any of the unconstitutional features which existed at the time of Serrano I. Retention of the basic-aid element in the foundation program, for example, continued to have an anti-equalizing effect by benefiting only those districts not eligible for equalization aid. Moreover, basic-aid districts continued to be favored over equalization-aid districts insofar as they might reach the foundation level with a tax rate less than the computational rate.

Revenue limit features of the new law had similarly serious defects. By taking 1972-73 revenues as a base figure, inequities resulting from property tax base differentials were perpetuated. More importantly, total "convergence" was allowed between high-spending revenue limits and rising foundation levels only after many, perhaps as many as twenty, years. After five years of functioning, assuming no vetoed overrides occurred, many high-wealth, high-spending districts would still be spending two to three times more per pupil than many low-wealth districts would be able to spend.

To illustrate the conclusion that, to the extent that equal tax rates could produce differing expenditure levels, and that equal expenditure levels could be produced by differing tax rates, the court provided the following example case.

> To illustrate, assume for a given district a $1,000 per ADA foundation level and a $3 per $100 computational tax rate. Assume further that one district has an assessed valuation of one-third that, or $16,667. In the first district the application of the computational tax rate will produce $1,500 per ADA, while in the second it will produce only $500 per ADA. The first district would not be entitled to equalization aid but would still receive the $125 per ADA basic aid payment. THe second district would be entitled to equalization aid in the amount of $375 per ADA--i.e., the figure by which the sum of the amount available under the computational rate ($500 per ADA) and the basic payment ($125 per ADA) is exceeded by the foundation level ($1,000 per ADA), but in order to spend at the foundation level it would have to tax at the computational rate. If it wished to exceed the foundation level, it would be required to tax at a rate (up to the allowable limit) in excess of that rate.
>
> The richer district, on the other hand, would be able to maintain the foundation level of expenditure by taxing at a mere $1.75 rate (i.e., that percent of $50,000 which when added to the basic aid allowance yields $1,000 per ADA). If applicable revenue limits allowed it to tax at the full computational rate (i.e., that rate at which the poorer district would be required to tax merely in order to achieve the foundation level) it would have the sum of $1,625 per ADA ($1,500 per ADA plus the basic aid payment of $125 per ADA)--or 1 5/8 the amount available to the poorer district--at its disposal.[219]

This example illustrated that the system, as modified by the new law, would continue to generate school revenue in proportion to the wealth of the individual school districts. As concluded by the court from this analysis:

> In view of all of the foregoing it is clear that substantial disparities in expenditures per pupil resulting from differences in local taxable wealth will continue to exist under S.B. 90 and A.B. 1267. The reason for this is that essentially local wealth is the principal determinant of revenue, that high wealth districts do not need to make the same tax effort as low wealth districts in order to reach, let alone exceed, the level of the foundation program and that in this setting, basic aid becomes anti-equalizing and "convergence" of doubtful achievement. . . .
>
> Substantial disparities in expenditures per pupil among school districts cause and perpetuate substantial disparities in the quality and extent of availability of educational opportunities. For this reason the school financing system before the court fails to provide equality of treatment to all the pupils in the state. Although an equal expenditure level per pupil in every district is not educationally sound or desirable because of differing educational needs, equality of educational opportunity requires that all school districts possess an equal ability in terms of revenue to provide students with substantially equal opportunities for learning. The system before the court fails in this respect, for it gives high-wealth districts a substantial advantage in obtaining higher quality staff, program expansion and variety, beneficial teacher-pupil ratios and class sizes, modern equipment and materials, and high-quality buildings.[220]

In a statement somewhat unique in the cases challenging state aid to public school systems, this court went on to state:

> There exist several alternative potential methods of financing the public school system of this state which would not produce wealth-related spending disparities. These alternative methods, which are "workable, practical and feasible," include: (1) full state funding, with the imposition of a statewide property tax; (2) consolidation of the present 1,067 school districts; (3) retention of the present school district boundaries but the removal of commercial and industrial property from local taxation for school purposes and taxation of such property at the state level; (4) school district power equalizing[,] which has as its essential ingredient the concept that school districts could choose to spend at different levels but for each level of expenditure chosen the tax effort would be the same for each school district choosing such level whether it be a high-wealth or a low-wealth district; (5) vouchers; and (6) some combination of two or more of the above. . . .
>
> There is a distinct relationship between cost and the quality of educational opportunities afforded. Quality cannot be defined wholly in terms of performance on statewide achievement tests because such tests do measure all the benefits and detriments that a child may receive from his educational experience. However, even using pupil output as a measure of the quality of a district's educational program, differences in dollars do produce differences in pupil achievement.[221]

In holding that the modified school finance system in California violated the equal protection provisions of the California Constitution, the court rejected the defendants' claims that the system was fiscally neutral and that it bore a rational relationship to a legitimate state purpose. With respect to the defendants' "fiscal neutrality" argument, the court concluded that "neutrality" did not exist since the conditioning of the availability of school revenues upon district wealth, with resultant disparities in school revenue, plus the continued dependency of the

quality of education upon the level of district expenditure, was not a "fiscally neutral" system and must, therefore, be declared invalid under the equal protection standard. As stated by the court:

> . . . we now adhere to our determinations, made in Serrano I, that for the reasons there stated and for purposes of assessing our state public school financing system in light of our state constitutional provisions guaranteeing equal protection of the laws (1) discrimination in educational opportunity on the basis of district wealth involves a suspect classification, and (2) education is a fundamental interest. Because the school financing system here in question has been shown by substantial and convincing evidence produced at trial to involve a suspect classification (insofar as this system, like the former one, draws distinctions on the basis of district wealth), and because that classification affects the fundamental interest of the students of this state in education, we have no difficulty in concluding today, as we concluded in Serrano I, that the school financing system before us must be examined under our state constitutional provisions with that strict and searching scrutiny appropriate to such a case.[222]

From the application of the strict scrutiny standard, the state "must shoulder the burden" of showing that the new system was necessary to achieve a "compelling state interest."[223] In rejecting the defendants' second argument that the state school aid system bore a rational, rather than compelling, relationship to a state interest, with that interest in part being based upon the argument of retaining local control of local public schools, the court also concluded:

> The system in question has been found. . . on the basis of substantial evidence, to suffer from the same basic shortcomings as that system which was alleged to exist in the original complaint--to wit, it allows the availability of educational opportunity to vary as a function of the assessed valuation per ADA of taxable property within a given district. The state interest advanced in justification of this discrimination continues to be that of local control of fiscal and educational matters. However, the trial court has found that asserted interest to be chimerical from the standpoint of those districts which are less favored in terms of taxable wealth per pupil, and we ourselves, after a thorough examination of the record, are in wholehearted agreement with this assessment.
>
> The admitted improvements to the system which were wrought by the Legislature following Serrano I have not been and will not in the foreseeable future be sufficient to negate those features of the system which operate to perpetuate this inequity. Foremost among these--especially in a period of rising inflation and restrictive revenue limits--is the continued availability of voted tax overrides which, while providing more affluent districts with a ready means for meeting what they conceive as legitimate and proper educational objectives, will be recognized by the poorer districts, unable to support the passage of such overrides in order to meet equally desired objectives, as but a new and more invidious aspect of that "cruel illusion" which we found to be inherent in the former system. In short, what we said in our former opinion in this respect is equally true here. "[S]o long as the assessed valuation within a district's boundaries is a major determinant of how much it can spend for its schools, only a district with a large tax base [per ADA] will be truly able to decide how much it really cares about education. The poor district cannot freely choose to tax itself into an excellence which its tax rolls

cannot provide. Far from being necessary to promote local fiscal choice, the present financing system actually deprives the less wealthy districts of that option."[224]

It is accordingly clear that the California public school financing system here under review, because it renders the educational opportunity available to the students of this state a function of the taxable wealth per ADA of the districts in which they live, has not been shown by the state to be necessary to achieve a compelling state interest.[225]

The court set a period of six years from the date of entry of judgment, September 3, 1974, as a reasonable time for bringing the system into constitutional compliance. It further held and ordered that the existing system should continue to operate until such compliance had been achieved and, as a guideline, stated that the wealth-related disparities between school districts in per-pupil expenditures, exclusive of the categorical aids special needs programs, should be reduced to less than $100 per pupil.

In the most recent state aid challenge in California, Serrano III, the Court of Appeals for the Second District found that modifications in the school finance system had reduced the prior wealth-related disparities to an insignificant level and that the remaining differences found in the system were justified by a legitimate state interest.[226] After Serrano II, Assembly Bill 65 was enacted as a comprehensive school finance measure which included four major components: (1) general purpose funding through the revenue limit, (2) special needs programs, (3) a "School Improvement Program," and (4) variable cost provisions. A.B. 65 increased revenue limits and increase the low-revenue districts' financial capacity to raise funds above the foundation program level by means of a Guaranteed Yield Program, a form of "district power equalization."

Essentially, under district power equalization a school district, no matter how poor, would be guaranteed a certain amount of revenue if it taxed itself at a certain rate. The idea was to eliminate the effect of differences in the assessed valuation of property from one school district to another. Because high wealth districts had higher assessed valuations, the tax rate produced excess funds which were subject to recapture by the state for redistribution to low wealth districts. Under the Guaranteed Yield Program, a district was guaranteed a certain amount of money it it taxed itself at a certain rate set by the state. If the district recovered less than the scheduled amount when it levied that rate, the state made up the difference.

The measure contained two "squeeze" mechanisms that applied to high-revenue districts. The first squeeze formula applied to all districts whose base revenue limits for the prior year were equal to or greater than the foundation program level for that year. The higher a district's base revenue limit, the lower the inflation adjustment that the district received. The second squeeze formula applied to some of the high-revenue districts, those whose prior year base revenue limits were 120 percent or more of the prior year foundation program level. For all of these districts an additional squeeze factor was applied. A.B. 65 also provided for transfers of revenues away from the high-revenue districts to the state for redistribution to low-revenue districts under the Guaranteed Yield Program discussed above.

The major tax equalization provisions of A.B. 65 were to have gone into effect on July 1, 1978. On June 6, 1978, however, the voters approved Proposition 13 which limited property tax rates to 1 percent of the full cash value of real property subject to taxation. Proposition 13 also required a two-thirds vote of the Legislature in order to increase state taxes and absolutely

prohibited imposition of a statewide property tax. Finally, Proposition 13 required a two-thirds majority vote in order for cities, counties, or special districts to impose any special taxes, a requirement which was generally recognized to be a practical impossibility. In no event, however, could property taxes be raised. (Calif. Const., Article 13A.)

The passage of Proposition 13 resulted in an immediate shortfall of $2.8 billion in local funds, and required a totally new method of school finance heavily skewed toward state funding. It nullified the structure for reform set out in A.B. 65, which relied primarily on provisions for redistribution of local property taxes from high to low revenue districts.

Due to the timing of Proposition 13, the state had only three weeks before the end of the fiscal year to establish a school finance plan for 1978-79. The result was Senate Bill 154, as amended by S.B. 2212. S.B. 154 was a one-year measure popularly known as the "bail-out" bill.

Under S.B. 154, the state guaranteed every district from 85 percent (for high revenue districts) to 91 percent (for low revenue districts) of the revenues it would have received if the pre-Proposition 13 revenue limit formula of A.B. 65 had gone into effect. To ease the cuts, districts were allowed to reduce their summer school and adult programs but to count the attendance in those programs for 1977-78 as part of their overall pupil population or ADA. In addition, districts were given credit, in figuring their projected pre-Proposition 13 revenues, for the revenues they received in 1977-78 from permissive overrides and for voted overrides authorized to be levied in 1977-78, including unused voted overrides that met certain limited criteria. Once the projected pre-Proposition 13 revenues were determined and the 9 percent to 15 percent cuts made, the state made up the difference between that amount and the amount of post-Proposition 13 property taxes allocated to the district. The state contribution was known as the state "block grant."

Despite its emergency nature, S.B. 154 succeeded in pre-serving some of the equalizing features of A.B. 65. This was because the S.B. 154 revenue limits were based on the revenue limits set by A.B. 65 for 1978-79. The A.B. 65 revenue limits, of course, were subjected to the "squeeze" formula whereby low revenue districts received larger increments to their revenue limit levels than did high revenue districts. Additionally, S.B. 154 imposed larger financial cuts on high revenue districts (up to 15 percent). This process resulted in what amounted to a "double squeeze."

S.B. 154 was a temporary measure, and was superseded by Assembly Bill 8, which established the system of school finance that was the subject of this litigation. A.B. 8 was a comprehensive fiscal relief bill designed to lessen the impact of Proposition 13 on local governments. The school finance provisions of A.B. 8 achieved Serrano II compliance without destroying local school districts already hard hit by inflation, declining enrollment, and cutbacks due to Proposition 13. The inflation increase formula contained in A.B. 8 was known as the Serrano closure formula. Under A. B. 8, high revenue districts received only very small inflation increases in their revenue limits, whereas low revenue districts were categorized by size and type in order to determine the extent to which a district was a "high revenue limit" or "low revenue limit" district.

In addition to establishing a long term Serrano closure formula, A.B. 8 continued to refine the revenue limit by excluding components which were designed to serve pupils with special needs or to compensate districts with variable costs. The basic funding element came to

be called the "base revenue limit." A.B. 8's refinement was incomplete because independent funding formulas could not be developed for all differences in costs and all special needs. However, as a result of this refinement process, the base revenue limit came close to reflecting truly general purpose revenues that were comparable from district to district.

The Serrano closure formula included an annual inflation adjustment with a "squeeze" mechanism whereby low revenue limit districts received larger dollar per ADA increases than higher revenue limit districts. The result of this provision was to further close the revenue gap between the high and low spending districts. The term "squeeze" was adopted to describe the fact that the higher revenue limit districts were forced to "squeeze" their budgets because their annual inflation allowances reduced their purchasing power.

The Serrano closure formula for the 1980-81 school year and subsequent school years was based on "breakpoints" for each year. These breakpoints were revenue per ADA amounts which were used to determine the variable inflation adjustments for school districts. For example, during the 1980-81 school year, inflation adjustments permitted under the Serrano closure formula ranged from $85 to $175 per pupil, depending upon the district's 1979-80 base revenue limit. For 1980-81, large unified districts with 1979-80 base revenue limits of $1500 or less per pupil received the "maximum" inflation adjustment of $150 per pupil. Large unified districts with 1979-80 base revenue limits of $2000 or more received inflation increases of only $85. Large unified districts with 1979-80 base revenue limits of between $1500 and $2000 received inflation increases of between $150 and $85.

Although the $150 increase was referred to as the "maximum" inflation increase, for 1980-81, A.B. 8 provided that districts with revenue limit below $1500 per pupil received an additional inflation adjustment of up to $25 per ADA. For these districts, the Serrano closure formula provided inflation adjustments of up to $175, and the per pupil revenue gap between them and the high revenue districts was closed by as much as $90 per year. Beginning in 1981-82, the lower breakpoints approximated the average base revenue limit for each category of district.

In summary, then, the current system worked as follows. All districts with base revenue limits per ADA in excess of the upper breakpoint in any given year received the minimum inflation adjustment. Districts with base revenue limits less than the upper breakpoint but greater than the lower breakpoint received inflation adjustments between the minimum and maximum inflation adjustments. Districts with base revenue limits less than the lower breakpoint for their size and type of district received inflation adjustments greater than the maximum inflation adjustment, but not to exceed 15 percent more than their prior year base revenue limit.

Subsequent legislation modified and refined A.B. 8 in various details. For example, A.B. 777 allowed districts to pull unreimbursed home-to-school transportation costs out of the base revenue limit to be funded separately. The revenue limit breakpoints were simultaneously adjusted downward to account for the pullout. This pullout served to improve the comparability of base revenue limit figures as a basis for assessing funding equity from district to district.

In the face of an escalating fiscal crisis, the Legislature in 1982-83 attempted to balance the state budget by eliminating the K-12 inflation adjustments. This action suspended further Serrano closure for one year. The Legislature did grant the schools an $11.90 per ADA increase, but specified that the funds could not be used for salary adjustments.

From these modifications of the California school finance system, the plaintiffs challenged the new system on several points including the minimum guarantee funding, the declining enrollment adjustment, and the School Improvement Program. With respect to the minimum guaranteed funding concept, the court found that it was designed to help districts with rapidly decreasing revenues adjust to their new financial circumstances. It was one of the mechanisms in the system of school finance that assured the modicum of budgetary stability necessary to program planning. As a practical matter, the minimum guarantee generally came into play in cases in which declining enrollment was so severe that, despite the declining enrollment adjustment, a district would find it necessary to make immediate and drastic expenditure reductions that would be disruptive to the educational needs of its students.

It was undisputed that prior to 1982-83 the guarantee had little or no effect on closure. In the 1982-83 fiscal crisis, approximately one-half the districts in the state, including both high and low revenue districts, received minimum guarantee money. The sharp increase in the number of districts receiving the guarantee in 1982-83, when constraints on educational financing were most severe, demonstrated the importance of this mechanism in providing districts some year-to year financial stability so that they could sustain the quality of education at some reasonable level while adjusting to other changes in educational financing.

The declining enrollment adjustment was designed to cushion the effect of losses in enrollment. It provided school districts that experienced declining enrollment in excess of one percent with a two-year transition period in which to reduce their expenditures to reflect decreasing ADA. The benefits of the program were available only for the two years following any covered decline in enrollment, with funding on the basis of 75 percent of the lost ADA the first year and 50 percent of the lost ADA the second year.

The declining enrollment adjustment was designed to address the inelasticity in costs that declining enrollment districts faced. For example, a district could not automatically or immediately adjust for the loss in revenue due to loss in ADA by cutting its staff or reducing its fixed costs. This inelasticity severely limited any discretion a district might otherwise exercise in the expenditure of declining enrollment funds. The evidence with respect to the importance of declining enrollment funds in meeting fixed costs that continue despite decreases in enrollment was uncontradicted. The testimony demonstrated that districts varied tremendously in the extent to which they experienced declining enrollment. They also varied in their inelastic costs, which tended to be a percentage of overall costs. Due to legal requirements that layoffs occur in reverse order of seniority, districts that were higher spending in part because they had more senior teachers at the high end of the salary scale had a particularly high percentage of inelastic costs accompanying declining enrollment, resulting in a sometimes substantial and unavoidable higher cost per pupil after a decline in enrollment. The evidence showed that many higher spending districts in fact experienced this problem, although both high and low revenue districts experienced declining enrollment and inelastic costs. The declining enrollment adjustment addressed these problems without a burdensome and expensive district-by-district assessment of the effects of declining enrollment.

The School Improvement Program (SIP) was an innovative program implemented in 1977 and designed to encourage the systematic improvement of pupil performance at the school site level. SIP grew out of the Early Childhood Education Program established in the early 1970s and expanded its concepts of school site reform to grades 4 through 12. Numerous witnesses called by both plaintiffs and defendants testified to the value and importance of SIP.

By statute, SIP funds must be used pursuant to the school improvement plan developed by a school site council which includes parents, teachers, school administrators and, in secondary schools, students as well. The plan must address the educational needs of the pupils at the school, specify the school's improvement objectives, indicate the methods by which the objectives are to be achieved, and include a staff development component as well as a method for evaluating whether the school had met its objectives. These funds must be used at the school sites identified and could not be used to pay for the salaries of teachers already employed by the district, to raise teachers' salaries, or to reduce class size district-wide.

It was undisputed that SIP funds were distributed in equal per pupil amounts to all similarly situated schools that qualified. As of the time of the trial, schools received a $30 per pupil planning grant for one year and annual implementation grants at levels of $148 per pupil for grades K-4, $90 per pupil for grades 4 through 8 and $65 per pupil for grades 9-12. The evidence clearly indicated that SIP had an established record of both improving education and involving parents in the process of educational planning at the local district level.

In this 1986 case, the court concluded that the state, based upon the new school finance system, did meet the prior rulings that the disparities caused by district property wealth must be reduced to "insignificant differences." In concluding that the new system did meet this requirement, although the previously stated guideline of $100 was not realized in all cases, the court found that the new system did meet the requirement of the California Constitution which had previously been infracted.

A considerable portion of the court's reasoning in Serrano III was based on the standards which should be used to measure or assess school finance equity and how it should be measured. Although both parties in this case agreed that some types of funding should be excluded, such as funding directed for special needs students, there was little agreement between the parties as to how much of the system should be "equalized" in order to attain an equitable system of finance. They also disagreed on the appropriate measuring device. The evidence at trial revealed nearly a score of statistical techniques that could be and had been used to measure school finance equity. The plaintiffs focused their attention on a single measure--the $100 band used to assess the system in 1974. The defendant opted for a variety of measures, an approach the court found far more helpful than use of one measure to the exclusion of others.

Based on the evidence and expert testimony, the court concluded that the base revenue limit per pupil was the most appropriate unit of analysis for measuring the equity of the new California system of school finance. The court adopted the definition of "categorical aid" as being:

> . . . a categorical aid is either money given as a measure of a special need and proportionate to that need, although not necessarily spent for that purpose, or money given for a special need that must be spent on that special need, without necessarily basing the amount of aid on the extent of the special need. The term . . . "Special needs," for purposes of defining special needs programs, include both student needs and district needs.
>
> This definition fits all of the funding programs beyond the base revenue limit which plaintiffs or their witnesses propose[d] to include in the unit of measure for assessing equity.

> Although there was persuasive testimony that even the differences remaining in base revenue limit income reflect differing costs and needs of districts, the base revenue limit is the fundamental element of school funding that all school districts receive. Therefore, we conclude that the base revenue limit per ADA is the proper unit to examine in comparing districts for equity purposes. . . .
>
> Categorical aids, special needs programs are not covered by the Serrano judgment. For the reasons that led the court to exclude them in 1974, this court now finds that categorical aids, special needs programs should not be included in calculating closure figures to measure equity. These programs are not wealth-related, and they are not, in any event, discriminatory. They serve substantial and, indeed, compelling state ends in an appropriate, rational and legitimate fashion.[227]

From this perspective the court concluded that the minimum guarantee funds, which were designed to assure districts a minimum level of revenue from year to year based on their prior year's base revenue limit, plus minimum guarantee, if any, plus declining enrollment adjustment, if any, was reasonably designed to minimize disruption of the quality of education during times of economic turmoil while the state simultaneously pursued the school financing closure mandated by Serrano II. With respect to the declining enrollment adjustment designed to provide a two-year period in which a school district could adjust to the loss in revenue due to a decline in ADA, the court found that the formula for computing the declining enrollment adjustment was a reasonable one designed to alleviate financial disruption and accompanying erosion of educational programs without either the burden and expense that would arise from detailed district-by-district analysis or the inequity that would result from use of statewide averages. The SIP, as a categorical aid procedure, was viewed by the court as being "eminently fair in that schools receive the same amount per pupil at any given grade level. The program is reasonable related to the important state interests of improving the quality of education and involving parents as well as teachers and school administrators in that process."[228]

In summarily determining that the differences in the fiscal disparities that remained in the new California system were both insignificant differences and/or justified by legitimate state interests, the court concluded that:

> . . . the differences in spending that exist today are justified by the need for an orderly transition from the old wealth-related system to the new state-funded system. . . . the state used historical spending patterns as a starting point for the equalization process. The use of historical spending figures served the following genuine and substantial state interests:
>
> (a) to facilitate, with the least overall harm to education, the transition from the local funding system to the statewide funding system required by Proposition 13;
>
> (b) to reduce differences in per-pupil expenditures without doing needless and irreparable injury to the education programs of California school children;

(c) to deal with the effects of inflation and recession in the midst of the Proposition 13 and Serrano II transitions in such a manner that the least harm was done to education in California.

> . . . the remaining differences in spending largely reflect differences in costs and needs among school districts. It has been amply demonstrated that the same amount of money does not buy the same services throughout the state. For example, the cost of heating or cooling school buildings varies greatly between extreme desert climates and the moderate weather of the California central coast.[229]

The court also recognized the following compelling state interests which justified the remaining, but mathematically and educationally insignificant, differences in spending:

(a) to balance the need to reduce spending differences against the need to minimize disruption to the educational programs of high revenue limit districts;

(b) to avoid further harm to poor and minority students with special educational needs;

(c) to provide some measure of stability in a time of fiscal crisis;

(d) to create a system of school finance that can be administered uniformly across the state's 1,041 school districts;

(e) to take account implicitly of differing costs and needs;

(f) to provide an educational system that is equitable, efficient and effective, while at the same time satisfying the other competing demands on the state's budget.

In concluding, the court stated:

> . . . [T]he current system of school finance, viewed in the context of the fiscal pressures confronting the state and other demands on the state budget, is equitable. . .[Moreover,] the current system of school finance satisfies all of the legitimate and, indeed, compelling state interests set forth above and that it therefore not only satisfies the rational relationship test but would also satisfy the strict scrutiny standard of equal protection review. . . . [T]he current system was not, of course, the only alternative available to the Legislature in response to the decision in Serrano v. Priest. . .[It is, however,] . . . the most effective plan available. . .for coping with Proposition 13, the Serrano mandate, and a state fiscal crisis.[230]

The Serrano III decision, unlike any decision by a state court either upholding or overturning a state's school finance system to date, represents a unique willingness on the part of the California court to accept a wide range of possible standards and measurements which may be used in gauging the constitutionality of a state school finance system. While this court denied

the plaintiff's arguments that the acceptable variance in per pupil spending should be the $100 range contained in the Serrano II decision, it indicated that measurements to assess equity could include measures of inputs, outputs, and outcomes. In addition, this court also indicated that a wide variety of statistical techniques commonly employed by school finance researchers, including the federal range ratio, relative mean deviation, McLoon's index, variance statistics, coefficients of variation, the standard deviation of logarithms, the Gini coefficient, Thiel's measure, and various forms of Atkinson's index using the base revenue limit as the unit of measure and the pupil as the unit of analysis, were acceptable measures of school finance equity. No other state court has recognized such a broad range of measures and statistical methods as judicially acceptable equity measures.

Connecticut

The state school finance system in the State of Connecticut has been subject to two judicial challenges. In 1974, the Superior Court of Connecticut, Hartford County, held that the statutory system providing for local municipal control of education violated the Equal Protection Clause of the State Constitution since the duty to provide education was a state and not a municipal duty, and that the school finance statute which ignored financial disparities between municipalities resulted in unconstitutional disparities in the quality of education provided to the children in the State.[231] The bases of claim of the plaintiffs, who were students in the Canto School District, centered on the argument that the funds necessary to operate public schools in Connecticut were raised principally by local property taxes; that the local property taxes thus raised varied on a broad scale from town to town; that that variation resulted in broad variations from town to town in the amount of money available for operating the local public schools; that these variations in turn produced broad variations from town to town in both the breadth and quality of instruction available to pupils; and that, therefore, the system for financing public school education discriminated against the pupils in Canton because the breadth and quality of public school education they received was inferior to that which pupils received in comparable towns with a larger base of taxable property.

This argument was based, in part, on the Connecticut Constitution which provided in Article VIII, Section 1, that "there shall always be free public elementary and secondary schools in the state. The General Assembly shall implement this principle by appropriate legislation." The court interpreted this mandate to indicate that the State, which had legislatively delegated the duty of public education to municipalities, had the constitutional duty of educating Connecticut children as a whole and not by municipalities. In the view of the court, ". . . the duty to educate is that of the state; delegating the duty does not discharge it."[232]

This decision was eventually taken to the Supreme Court of Connecticut and was upheld.[233] In addition to recognizing that education was a state duty in Connecticut, this court found that the legislation which ignored financial disparities of municipalities and which, therefore, resulted in disparities in quality of education was not appropriate legislation and was violative of the state constitutional requirement that the General Assembly enact appropriate legislation to carry out its educational duty; and that the defense of sovereign immunity was not available to foreclose a declaratory judgment in a matter of such public importance.

The claim before the court concentrated on the argument that the funds necessary to operate elementary and secondary schools in Connecticut were raised principally by local property taxes that varied on a broad scale from town to town. These variations, in turn, produced broad variations from town to town in both breadth and quality of instruction available to pupils. Therefore, the funding system for public schools discriminated against the public in Canton because the quality of education they received was inferior to that received by pupils in comparable towns with a larger base of taxable property.

In Connecticut, the funds raised by local property taxes by each town were supplemented by both state and federal grants. The principal state grant--the average daily membership grant--was $250 per pupil in average daily membership. A state commission which studied school finance issued a report containing the following estimate of the sources of school revenue in Connecticut during the 1973-74 school year: local taxes, 73.8 percent; state aid, 23.1 percent; and federal aid, 3.1 percent.[234] Because local property taxes were the principal source of revenue for schools, one significant way to measure the relative amount of money available was to obtain the grant-list-per-pupil figure in Connecticut. This varied from approximately $20,000 in Chaplin to more than $170,000 in Greenwich. Canton was at the lower end of the scale with approximately $38,000. The state average was $53,312.

It was found by the commission that many towns could tax far less and spend much more, and those less fortunate towns could not catch up in school expenditure because taxes were already as high as homeowners could tolerate. Dual inequity--a family could pay more and get less for its children--became the fundamental issue of this case.

This dual inequity was viewed as reducing the "quality" of education in property-poor school districts. As stated by the court:

> The criteria for evaluating the "quality of education" in a town include the following: (a) size of classes; (b) training, experience and background of teaching staff; (c) materials, books and supplies; (d) school philosophy and objectives; (e) type of local control; (f) test scores as measured against ability; (g) degree of motivation and application of the students; (h) course offerings and extracurricular activities. In most cases, the optimal version of these criteria is achieved by higher per pupil operating expenditures, and because many of the elements of a quality education require higher per pupil operating expenditures, there is a direct relationship between per pupil school expenditures and the breadth and quality of educational programs.[235]

From these basic considerations, this court found that education was a fundamental right under the Connecticut Constitution, that the state system of financing public education was an "interference" with this fundamental right, and, therefore, the judicial standard to be applied in this case was that of "strict judicial scrutiny." From this perspective, the court found that the state school finance system violated the equal protection mandate of the state's constitution as a discrimination against the pupils in Canton because the breadth and quality of the education they received was, to a substantial degree, narrower and lower that that which pupils received

in comparable towns with larger tax bases and a greater ability to finance education. In also rejecting the defendants' argument that the school finance system was a legitimate system for promoting local control, the court stated:

> . . . although local control of public schools is a legitimate state objective, since local control of education need not be diminished if the ability of towns to finance education is equalized, the local control objective is not a rational basis for retention of the present financing system. . .the state has not selected the less drastic means for effectuating the local control objective and, therefore, the system, beyond a reasonable doubt, violates the constitution of Connecticut . . .[236]

In considering an appropriate remedy in this case, the court recognized that the Connecticut General Assembly had established a commission to study school finance and equal educational opportunity, and that the commission's recommendations were being considered by the legislature at the time this judicial action occurred. The court, therefore, simply remanded the case for further proceedings consistent with the court's decision.

In a follow-up action in 1985, the Connecticut Supreme Court again considered the system for financing public education as it had been changed in 1979 in response to the 1977 decision of the court in Horton I.[237] In Horton II, the original plaintiffs and others challenged the constitutionality of the new school finance system on the principal issue of whether the new system provided the equal educational opportunity for all Connecticut public school children that the constitution required.

The new school finance plan had two principal components: (1) the guaranteed tax base grant formula (GTB) and (2) the minimum expenditure requirement (MER). The GTB formula was a plan of state grants designed to provide towns with a state-guaranteed tax base for the financing of public school education. It was designed to distribute equitably state aid to towns that established their eligibility through the MER, a formula that set the minimum acceptable level of per pupil town expenditures. The 1979 act did not commit any of the participants to immediate full implementation. Both state funding and local MER payments were to be phased-in over a five-year period. In addition, property-poor towns were protected by a temporary "alternate" MER, which gave them access to GTB grants on the basis of their historical record of educational financing. Finally, all towns were guaranteed minimum-aid grants of $250 per pupil.

The purpose of the GTB was to achieve educational equity by means of a formula which equitably distributed state aid by determining how such aid would be distributed. It calculated each town's eligibility for aid by means of a formula which took into account the town's wealth as measured by the value of its real and personal property, the town's effort as measured by the relationship between its educational expenditures and its wealth and per capita income, and the town's need as measured by the number of its students and their educational status. The GTB formula was designed to make available to qualifying towns the guaranteed wealth base of a designated "town". The MER per pupil was determined by a comparison with the net current expenditure per pupil in the town where the seventy-fifth percentile student resided, when the towns were ranked form low to high according to their net current expenditures per pupil. This

factor was also weighted according to the number of children in the town who received aid to families with dependent children (AFDC). The MER was, therefore, intended to ensure that state equalization aid was allocated by educational expenses rather than to local tax relief.

In considering the issue in Horton II, the court set the framework for its decision by stating:

> Assessment of the constitutionality of the GTB plan for educational equity . . . must start with the constitutional standard that we laid down in Horton II. Relying on those articles of the Connecticut constitution that provide for free public education and for equal rights and equal protection, we held that "in Connecticut the right to education is so basic and fundamental that any infringement of that right must be strictly scrutinized." We recognized, however, that the fundamental right to educational equity implicated the law of equal protection in a way that was "in significant aspects sui generis" and hence could not be measured "by accepted conventional tests or the application of mechanical standard." In particular, we noted in Horton I that "[t]he wealth discrimination found among school districts differs materially form the usual equal protection case where a fairly defined indigent class suffers discrimination to its peculiar disadvantage. The discrimination is relative rather than absolute." . . . We also acknowledged the general applicability of the presumption that legislative action is constitutional unless its invalidity is established beyond a reasonable doubt. . .We therefore defined the state's constitutional obligation as a duty to allocate governmental support to education so that state funds, instead of equally benefiting all the towns by way of a flat grant, would offset the demonstrated significant disparities in the financial ability of local communities to finance local education through the local property tax . . .We held that the state was required to assure to all students in Connecticut's free public elementary and secondary schools "a substantially equal educational opportunity."[238]

As it did in Horton I, the court adopted the strict scrutiny standard in considering the challenge to Connecticut's new school finance plan. While the new plan continued to show "significant disparities" in the funds that local communities spent on basic public education, the court found that the GTB program did, in fact, narrow such discrepancies and increased the state's share of overall educational costs for public schools from 29.9 percent to 42.2 percent. The court also concluded that, if adequately funded, this program would provide sufficient overall expenditures for public school education, that its five-year-phase-in assured an efficient use of educational resources, and that its design would provide equity in the distribution of educational funds and a proper balance between state and local contributions thereto. In addition, the court found that the program retained a salutary role for local choice by guaranteeing minimum funds without imposing a ceiling on what a town might elect to spend for public education. Finally, the court noted that a number of factors beyond direct state control had tended to increase rather than diminish discrepancies in educational spending. The court identified several such factors: public school enrollment has decreased more rapidly in the wealthier than in the poorer towns; and recent high rates of inflation had eroded the benefits of the GTB grants to the poorer towns. In light of all of these circumstances, the GTB program was viewed as a reasonable response to the policy dictates of Horton I.

Therefore, while the original school finance plan was found to impinge on the fundamen-

tal right of the students to a substantially equal education, the new plan for state distribution of categorical grants did not and was found to be constitutional. The State of Connecticut had taken the responsibility for public education as mandated by the constitution. The new school finance program was also recognized as providing a state program for the equitable distribution of categorical grants for transportation, special education, and school construction in a constitutionally permissible manner. In summary, the court concluded that, while the new plan did not achieve full statewide equity in financing public education, this plan did meet the constitutional mandates in Connecticut.

Washington

The Supreme court of Washington was called upon to consider the constitutionality of the state's method of financing public education on two separate occasions. In a 1975 decision, the court rejected a constitutional challenge brought by 25 school districts and their resident parents, taxpayers, and children. The plaintiffs represented school districts with low assessed valuation of property per pupil. They claimed, in part, that the school finance system denied them equal protection of law, that the system failed to meet the constitutional mandates regarding education, and that the system failed to provide a general and uniform system of public schools as prescribed by the state's constitution.[239]

In considering these claims, the Washington Supreme Court, following the reasoning of Rodriguez, rejected the equal protection of law argument by holding that the Equal Protection Clause of the Fourteenth Amendment and the corresponding provision of the State Constitution have the same significance and were to be construed alike. With respect to the two educational provisions of the State Constitution, the court recognized that the Washington Constitution specifically provided in Article 9, Section 1, that "it is the paramount duty of the state to make ample provision for the education of all children residing within its borders." In addition, Article 9, Section 2, provided "the Legislature shall provide for a general and uniform system of public schools."

In its analysis of these two constitutional provisions, and the historical intent and interpretation associated with them, the court concluded that school districts, while having a right to receive state funds as appropriated by the Legislature, did not have a constitutional right to any specific method of allocating such funds. While recognizing that large disparities in local district wealth and expenditures per pupil did exist, the court concluded that:

> Thus, it is the legislature and the state superintendent upon whom the constitution and statutes impose the responsibility of discharging the paramount duty of the state (1) to make ample provision for the education of all children; (2) to prescribe and enforce the minimal standards necessary to constitute ample provision; and (3) to allocate state equalization funds however they may be described so that every child has access to a "general and uniform system of public schools" without "distinction or preference on account of race, color, caste, or sex."
>
> A sensible construction of the meaning of "the paramount duty," therefore, is that, while it imposes a direct duty upon the state, the nature and extent of that duty and the means of carrying it out rest upon the legislature and the state superintendent. . .[240]

With respect to the constitutional requirement that a "general and uniform" system of public schools must be provided, the court concluded:

> A general and uniform system, we think, is, at the present time, one in which every child in the state has free access to certain minimum and reasonably standardized educational and instructional facilities and opportunities to at least the 12th grade--a system administered with that degree of uniformity which enables a child to transfer from one district to another within the same grade without substantial loss of credit or standing and with access by each student of whatever grade to acquire those skills and training that are reasonably understood to be fundamental and basic to a sound education. We are of the opinion, therefore, that this record fails to show that the legislature has not provided and that the Superintendent of Public Instruction does not administer a general and uniform system of public schools in this state.[241]

While expressing a recognition of the plight of low property wealth school districts, the court concluded that a correction of the state's school finance system was properly vested in the Legislature and not in the courts. The method of financing public education in Washington was determined to be both constitutional and a valid exercise of legislative power.

Three years after this decision, the Washington Supreme Court was presented with a new challenge to the state school finance system.[242] Again brought by a school district and resident parents, taxpayers, and children, this case sought a declaration that the state's reliance on a "special excess levy funding" for discharging its educational responsibilities was unconstitutional.

At the time of this case, the foundation program in the State was based on staff units with an average of $19,877 per certified staff person with a state salary schedule that included weightings for experience and training. There was no guaranteed tax base in the local districts. Levies were limited to the unfunded portion of the basic program for the previous school year plus 10 percent of the previous year's full funding level. The State Superintendent of Public Instruction could grant authorization to exceed the levy limitation provided the excess levy dollar amount per annual full-time equivalent (FTE) student did not exceed 104 percent of the previous year's comparable dollars per annual FTE student. There was a charge-back factor which required that local funds be used as a subtraction factor in a district. However, this charge-back was not a required local levy. Foundation funds included real estate transactions plus receipts from public utilities fees and federal forest revenues. The plaintiffs gave evidence that:

> . . . the school district salary scale, staffing ratios, nonsalaried costs, and state funding established that state funding was insufficient to provide for basic education within the district under any suggested definition of basic education.[243]

For example, the evidence demonstrated that Seattle School District No.1 must provide an educational program that complied with state statutes, regulations of the State board of Education and the Superintendent of Public Instruction. Yet, while required to provide the program, the District was not given sufficient state revenue to do so. Rather, the Legislature had authorized school districts to supplement insufficient state funding by resort to special

excess levy elections. This scheme merely authorized a district to "seek" more adequate funding form the local electorate; but, the voters were not required to approve the request. A special excess levy election could not be brought more than twice in any one year. If the second request failed, the district must operate within the funds provided by the State.

School districts had no independent authority to raise funds necessary to fulfill their legal obligations. Consequently, school districts in general, and the District in particular, relied increasingly upon special excess levies to obtain funds necessary for their maintenance and operation budgets.

In 1975 the District twice submitted special excess levy proposals for the purpose of raising necessary additional revenue. The District did not base its levy request upon actual need. Rather, it sought a lesser amount believing it might attract voter approval. Although the amount requested, when added to the State guarantee, would not have provided full funding, both levy propositions failed. As a result, the District not only lost needed revenue, it incurred the heavy expense of twice placing the issue on the ballot. The District's experience was not unique. During the 1975-76 school year, 40 percent of the students in the State were in levy-loss districts.

The findings of fact revealed that if special excess levies were utilized, in part, to provide for the maintenance and operation of a school district, a levy failure would adversely affect the quality of education and a double levy failure would severely damage a district's educational program.

Faced with deteriorating physical plants, a reduction in budgets for books, supplies, staff and programs, and a double levy failure, petitioners brought this action. The thrust of their claim was that the State had failed to discharge its "paramount duty" to make "ample provision for the education" of its resident children pursuant to Constitution Article 9, Section 1, and to "provide for a general and uniform system of public schools" pursuant to Constitution Article 9, Section 2.

Reversing its earlier position that any correction in the school finance system was in the legislative domain, the court in this second case adopted the opinion that it "is the proper function of this court to interpret and enforce the Constitution of the State of Washington."[244] From this perspective, the court concluded that Article 9, Section I, of the Washington Constitution imposed a "paramount" duty upon the State which in turn created a "correlative right" on behalf of all resident children. As stated by the court:

> By imposing upon the State a paramount duty to make ample provision for the education of all children residing within the State's borders, the constitution has created a "duty" that is supreme, pre-eminent or dominant. Flowing from this constitutionally imposed "duty" is its jural correlative, a correspondent "right" permitting control of another's conduct. Therefore, all children residing within the borders of the State possess a "right," arising from the constitutionally imposed "duty" of the State, to have the State make ample provision for their education. Further, since the "duty" is characterized as paramount the correlative "right" has equal stature.[245] (Emphasis in original)

From this reasoning, the court determined that the mandates of Article 9, Sections 1 and 2, of the constitution could only be achieved if ". . . sufficient funds are derived, through

dependable and regular tax sources, to permit school districts to provide 'basic education' through a program of education in a 'general and uniform system of public schools.'"[246] The legislative authorization that school districts could submit special excess tax levy elections to public referendum was not viewed as satisfying these constitutional mandates.

It was concluded that during the 1975-76 school year, 40 percent of the students in the State of Washington resided in levy-loss districts.[247] Such levy defects placed public school education in immediate danger. In fact, the districts were forced to reduce substantially the teaching staff at both the elementary and secondary levels. This change in the student-teacher ratio reduced subject offerings per student. Individualized student instruction and counseling were decreased. Loss in program coordination ensued. The budget for books, programs, and supplies was reduced. One high school's accreditation was placed on temporary status. Thus, these conditions of educational inputs drastically affected educational outcomes in the State of Washington.

The court concluded, therefore, that the special excess levy option, which did not provide a dependable or regular tax source for schools and was wholly dependent upon the "whims" of the electorate, did not meet constitutional mandates. This "instability" was further demonstrated by this levy's dependence upon the assessed valuation of taxable real property within a district. Some districts with substantially higher real property valuations than others made it considerably easier for them to raise funds. Such variations were viewed by the court as not providing a dependable or regular source of revenue for meeting the constitutional mandates. As concluded by the court:

> We hold that any statutory scheme which authorizes the use of special excess levies to discharge the State's paramount duty of making ample provision for "basic education" or a basic program of education is not the dependable and regular tax source required to comply with const. art. 9. 1 and 2. Thus, we agree with the trial court that the statutory funding scheme extant during school year 1975-76 is unconstitutional. However, we do not hold that all resort to the use of special excess levy funds is forbidden. The Legislature may authorize utilization of special excess levies to fund programs, activities and support services of a district which the State is not required to fund under its basic mandate. Thus, if local taxpayers desire to fund an "enrichment program" which goes beyond that required by the constitution, they may do so by means of a special excess levy.[248] (Emphasis in original.)

In a separate concurring opinion, one Justice Utter also stated:

> I concur in the majority opinion . . . that the state has not met its constitutional duty to fund ample education in a general and uniform way. The testimony in this case establishes that by any standard definition of educational quality the state's contributions to school finance have been inadequate. Due to the state's abandonment of its responsibilities in this area, local school systems have been forced to submit a large percentage of their budget to local voting, a fact which has jeopardized the fairness of the state's educational system. Under the ensuing system of local levies, the local educational program may not reflect children's needs, but rather local wealth and taste and the size of the local school property tax base. Consequent variations in district budgets are inconsistent with the fair and uniform system of education contemplated by the constitution.[249]

West Virginia

In one of the most dramatic state court cases resulting in a decision that a state's school finance system violated constitutional requirements, the Supreme Court of Appeals of West Virginia found the school finance system to violate the educational and equal protection rights of school children.[250] This case was brought as a class action suit for declaratory judgment on the claim that the system of financing public schools violated the West Virginia Constitution by denying plaintiffs the "thorough and efficient" education required and by denying them equal protection of the law. Plaintiffs, parents of five children in Lincoln County, brought action claiming there was out-of-balance funding in property-poor counties compared with those in wealthier districts. Although the case was dismissed for insufficient evidence, it was later appealed and heard in the West Virginia Supreme Court in 1979. The higher court found the State had not provided a thorough and efficient educational system and had failed to define and establish quality standards of education.

The educational claim raised by the plaintiffs was based on Article 12, the "Education Clause," of the West Virginia Constitution which provided, in relevant part:

> The legislature shall provide, by general law, for a thorough and efficient system of free schools.
>
> Public schools of high quality to be maintained: The General Assembly shall provide for a system of free public elementary and secondary schools for all children of school age throughout the Commonwealth, and shall seek to ensure that an educational program of high quality is established and continually maintained.
>
> Standards of quality; State and local support of public schools: Standards of quality for the several school divisions shall be determined and prescribed from time to time by the Board of Education, subject to revision only by the General Assembly.

Although the court could not find a commonly agreed upon definition of what the "thorough and efficient" clause was meant to include from the historical record, the court concluded that:

> We conceive that both our equal protection and thorough and efficient constitutional principles can be applied harmoniously to the State school financing system. Certainly, the mandatory requirement of "a thorough and efficient system of free school," found in Article XII, Section 1 of our Constitution, demonstrates that education is a fundamental constitutional right in this State.[251]

Having concluded that the "thorough and efficient system of free schools" mandate of the West Virginia constitution made education a fundamental right in West Virginia, under equal protection guarantees any discriminatory classification in the state's educational financing system could not stand unless the State could demonstrate some compelling state interest to justify the unequal classification. It was held that the "thorough and efficient" clause contained in West Virginia's Constitution required that the Legislature develop certain high statewide educational standards. If these standards were not being met, it must be determined that failure was not a result of inefficiency, but failure to follow the existing state standards.

The West Virginia school aid formula was composed of four basic components: (1) an amount raised from local levy on real and personal property; (2) the state foundation aid, which was money the State paid out of general revenue funds to the counties based on a formula composed of seven components; (3) state supplement benefits; and, (4) amounts raised locally by special levies by vote of the people of the county.

Under the West Virginia Constitution, maximum levy rates were set for each class of property; but by a 60 percent vote of the people, an express levy could be made which would be limited to 50 percent of the maximum regular levy rate. West Virginia required the State Board of Education to compute the county's property tax revenue for school purposes based on appraisement made by the State Tax Commissioner. It was this amount which was subtracted from the county's gross state foundation aid.

First, there was a question as to whether the counties were following the State Tax Commissioner's appraisal figures. If county courts were not supplementing the difference, disparities would arise between actual tax revenues received for school purposes and the hypothetical "local share," which was deducted from computation of expenses used in determining state foundation aid and was 17 percent less than the amount actually raised locally for education. This 17 percent was thus not considered in the state aid calculation.

Second, the primary expense category for the state aid formula was the allowance for professional educators. In property-poor counties, the number of professional educators was proportionately less than in property-rich counties because of the lack of classroom facilities and other physical resources.

The West Virginia Supreme Court held that both the equal protection and the thorough and efficient constitutional principles demonstrated that education was a fundamental right in West Virginia. It also held, because education was a fundamental constitutional right in the State under the equal protection guarantees, that discriminatory classifications found in the educational finance system could not stand unless the State could demonstrate some compelling state interest to justify the unequal classification. The court adopted the more demanding strict scrutiny of equal protection standard in this case because it found education to be a constitutionally derived right. As summarized by the court:

> Our basic law makes education's funding second in priority only to payment of the State debt, and ahead of every other State function. Our Constitution manifests, throughout, the people's clear mandate to the Legislature, that public education is a prime function of our State government. We must not allow that command to be unheeded.[252] (Emphasis in original)

On remand following this 1979 decision, the Circuit Court of Kanawha County was specifically directed to:

> . . . inquire whether the lack of a high quality educational system is the result of a failure to follow existing statutes and standards or whether it is due to an inadequacy of the system; whether the financing of the existing educational system is equitable on the state and local levels, including investigation into the efficacy of state supplemental aid to county school systems and distribution of the State

School Building Fund, and the disparity in property values and property assessment among the counties; whether various State agencies and officials are performing their constitutional and statutory duties with respect to education, including the State Board of School Finance, West Virginia Board of Education, State superintendent of Schools and State Tax Commissioner; and whether local school officials are properly performing their statutory duties.[253]

In the remanded action, the circuit court outlined the basic elements of a "thorough and efficient" educational system as mandated by the constitution.[254] The elements were classified into the broad categories of curriculum, personnel, facilities, and materials and equipment. By comparison, the circuit court found the systems in existence in Lincoln county and other counties across the State to be "woefully inadequate." The circuit court further found that some counties, mostly those with greater property wealth, had educational systems that come close to "thorough and efficient"; however, the court determined that all county systems required improvement.

The circuit court reviewed the state standards that existed for classifying and rating schools and found that they were "subminimal" and had no relationship to a high quality educational system. In 1965, the West Virginia Board of Education adopted the Comprehensive Educational Program (CEP) in an attempt to establish specific standards for education around the State. The court found, however, that although the CEP contained some elements of a high quality educational program, it was never monitored by the State Board at the county level and, as a result, faded into obsolescence. The State Board adopted other documents such as Standards for Educational Quality, but the court found them to be little more than a general restatement of statutory policies.

The circuit court also found that the mechanism for financing education in West Virginia was discriminatory because it favored counties that were property-wealthy and, in some circumstances, punished counties that were sparse in population and property-poor. The court found a positive correlation between the quality of a county's educational system and its wealth of real and personal property; and, conversely, found a negative correlation between the lack of quality education in a county and its low property values.

In its conclusions of law, the circuit court determined that the State had a duty to develop legally recognized elements of a thorough and efficient system of education in every child to his or her capacity, by providing high quality programs to children of all abilities. The circuit court interpreted this duty to mean that all direct and indirect costs of educational programs around the State must be fully included in the state financing structure de-emphasizing financing on the county level.

The circuit court ruled that West Virginia's current educational system and its financing mechanism were unconstitutional and that the State had a duty to eliminate the effects of this unconstitutionality. Specifically, the court decided that the West Virginia Board of Education had violated its statutory duty to determine educational policies of the State in conformity with constitutional and statutory mandates. The circuit court held that the standards promulgated by the Board had been far too general and minimal to define the elements of a thorough and efficient system of education for the State. The circuit court determined that, generally, the West Virginia Board of Education had failed to perform its constitutional and statutory duties with respect to formulating high quality standards for education and classification of schools, nor was it meeting its supervisory responsibilities over the county systems.

In the final analysis, the court determined that the "overriding cause" of the current unconstitutional educational system was "inadequate and inequitable" funding. Consequently, the circuit court ordered the appointment of a special master to oversee the development of a master plan for the constitutional composition, operation, and financing of the educational system in West Virginia. The master plan was to be submitted to the circuit court for its approval.

Pursuant to the directives of the circuit court, the defendants developed and submitted for the court's approval A Master Plan for Public Education. This Master Plan was an extensive compilation of detailed concepts and standards that defined the educational roles of the various state and local agencies, set forth specific elements of educational programs, enunciated considerations for educational facilities, and proposed changes in the educational financing system.

In its final order the circuit court substantially approved the Master Plan with two primary exceptions. First, the Master Plan proposed a four-phase, 17-year schedule for full implementation of the plan. Instead, the court ordered implementation of the Master Plan at the "earliest practicable time." Second, the circuit court found the Master Plan to be contrary to previously enumerated standards because it did not contain a grievance procedure for parents and other concerned citizens to question the system.

The court's approval, with the two noted exceptions, was challenged in the Supreme Court of Appeals of West Virginia in 1984.[255] Fundamentally, the petitioners claimed that, since the circuit court did not specifically order the implementation and enforcement of the Master Plan, the system which had previously been ruled unconstitutional had been continued. The Supreme Court of Appeals found that the ". . . State educational respondents have a specific duty to implement and enforce the policies and standards of the Master Plan . . .the West Virginia Board of Education and the State Superintendent of Schools . . . have a duty to ensure the complete executive delivery and maintenance of a 'thorough and efficient system of free schools' in West Virginia as that plan is embodied in A Master Plan for Public Education . . ."[256]

Wyoming

In 1980, the Wyoming Supreme court found the system employed to finance the state's public schools to be in violation of the constitution.[257] This case was brought on the claim that the Wyoming system of school financing--based principally on the local property taxes whereby property-rich school districts uniformly had more revenue per student than property-poor ones--was unconstitutional in that it failed to afford equal protection in violation of the State Constitution.

The Wyoming foundation program was based on a total of $21,300 per classroom unit with weightings for small elementary and secondary schools. A classroom unit consisted of twenty-five pupils. Pupil count was determined by average daily membership (ADM). The foundation program was to generate minimum education for every child by providing state financial assistance in inverse proportion to taxpayer ability of local school districts.

In practice, however, the assessed valuation per student in school districts in Wyoming varied from $209,543 to $10,899--a ratio of more than 21 to 1. In Washakie District No. 1, $161,000 for education was available. In Campbell District No. 1, $329,900 was available.

This system was generated under Section 1, Article VII, of the Wyoming Constitution which provided; "The legislature shall provide for the establishment and maintenance of a complete and uniform system of public instruction, embracing free elementary schools of every needed kind and grade, . . ." In addition, it was also constitutionally specified that "the general supervision of the public schools shall be entrusted to the state superintendent of public instruction, whose powers and duties shall be prescribed by law." (Section 14, Article VII, Wyoming Constitution.) These and other constitutional expressions left no doubt that the legislature had complete control of the state's school system in every respect, including division of the state into school districts and providing for their financing. The legislature's powers were subject only to restrictions on discrimination on account of sex, race or color, prescribing textbooks, and sectarianism. The matter of providing a school system as a whole and financing it was a responsibility of the legislature.

Section 23, Article I, of the Wyoming Constitution also provided that: "The right of the citizens to opportunities for education should have practical recognition. The legislature shall suitably encourage . . ." In addition, Section 28, Article I, of the Wyoming Constitution also stated that: "The legislature shall make laws for the establishment and maintenance of systems of public schools which shall be open to all the children of the state and free form sectarian control."

With respect to the total constitutional recognition of education in Wyoming, the court concluded:

> In the light of the emphasis which the Wyoming Constitution places on education, there is no room for any conclusion but that education for the children of Wyoming is a matter of fundamental interest. In addition to the Wyoming constitutional provisions we have cited and specifically applied in this opinion, there are two others which re-emphasize the fundamental importance placed on education by the founders of our state. . . .
>
> A classification on the basis of wealth is considered suspect, especially when applied to fundamental interests. The need for a foundation program and the fact that, as presently employed due to lack of funds, it falls far short of raising the level of poor counties to that of rich counties, clearly indicates that funds are distributed upon the basis of wealth or lack of it. The classification is therefore suspect. The respective tax bases of the school districts of this state and their per-student resources reflect discordant correlations which plainly demonstrate the failure of the current system to provide equal educational opportunity.[258]

Given the constitutional emphasis on education in Wyoming, the court held that the State had the burden of demonstrating a compelling state interest in financing its public schools in the manner which it employed. Since the State could not show such an interest, the court concluded that "the quality of a child's education in Wyoming, measured in terms of dollars available for that purpose, was dependent upon the property resources of his school district," and that "the right to an education cannot constitutionally be conditioned on wealth in that such a measure does not afford equal protection."[259]

The court applied the strict scrutiny standard, declaring education to be a fundamental right. Evidence was presented showing fiscal disparities, unequal educational inputs, and unequal educational outcomes. The court focused on the inadequacy of the foundation plan used in Wyoming's Constitution and Chief Justice Raper, speaking for the majority, held:

> Education for children is a matter of fundamental interest. Statutory classification of the basis of wealth is suspect, especially when applied to a fundamental interest. The state system of financing public education whereby funds were distributed on the basis of wealth or lack of it, was suspect classification and therefore burden was on the state to show compelling interest served by such a system which could not be satisfied by any other convenient legal structure. Equality of dollar input is manageable. There is no other viable criterion or test. It is nothing more than an illusion to believe that the extensive disparity in financial resources is not related directly to quality of education. It is our view that until equality of financing is achieved, there is no practicable method of achieving equality of quality.[260]

The court further clarified its position in a final statement by specifying:

> We only express the constitutional standard and hold that whatever system is adopted by the legislature, it must not create a level of spending which is a function of wealth other than the wealth of the state as a whole. There are alternatives and combinations of alternatives suggested by the many comprehensive reference works alluded to. The ultimate solutions must be shaped by the legislature. The assignment has complexities but is not insoluble.
>
> So that there may be no question about this, we wish to make clear that we are not suggesting that each school district receive exactly the same number of dollars per pupil as every other school district. We understand that there are special problems and amounts may be distributed in a mode similar to the foundation fund which takes into consideration various balancing factors. A state formula can be devised which will weight the calculation to compensate for special needs--educational cost differentials. We do not purport to exhaustedly list the factors or methodology that should be employed. We only proscribe any system which makes the quality of a child's education a function of district wealth. We hold that exact or absolute equality is not required. There must be allowance for variances in individuals, groups and local conditions. All precedents are in accord on this proposition.[261]

Arkansas

In 1983 the Arkansas Supreme Court struck down as unconstitutional the state's formula for financing public schools because it failed to correct inequities created by widely differing property wealth.[262] This action was brought by eleven property-poor school districts against DuPree and the other members of the Arkansas State Board of Education. Basically, the claim was made that the school finance system violated the equal protection guarantees of the Arkansas Constitution (Art. II, sec. 2, 3, 18), and the education article (Art. XIV, sec. 1) which provided:

> Free school system--Intelligence and virtue being the safeguards of liberty and the bulwark of a free and good government, the State shall ever maintain a general, suitable and efficient system of free public schools and shall adopt all suitable means to secure to the people the advantages and opportunities of education. The specific intention of this amendment is to authorize that in addition to existing constitutional or statutory provisions the General Assembly and/or public school districts may spend public funds for the education of persons over twenty-one (21) years of age and under six (6) years of age, as may be provided by law, and no other interpretation shall be given to it.

The basic contention of the school districts was that the great disparity in funds available for education to school districts throughout the state was due primarily to the fact that the major determinative of revenue for school districts was the local tax base, a basis unrelated to the educational needs of any given district; that the current state financing system was inadequate to rectify the inequalities inherent in a financing system based on widely varying local tax bases, and actually widens the gap between the property-poor and property-wealthy districts in providing educational opportunities.

The funding system in operation at the time of this challenge was based on three sources of revenue: state revenues provided 51.6 percent, local revenues 38.1 percent, and federal revenues 10.3 percent. The majority of state aid was distributed under the Minimum Foundation Program (MFP). In 1978-79, MFP constituted 77.1 percent of all state aid. Act 1100 of 1979, the challenged MFP program, was similar to prior MFP programs and consisted of two major elements: base aid and equalization aid. The formula was based on a calculation of teacher and student population per district. The base aid program contained a "hold-harmless" provision which guaranteed that no district would receive less aid in any year than it received the previous year. As a result, a district with declining enrollment would over the years get continually higher aid per pupil. While Act 1100 eliminated the district "hold-harmless" provision, it still contained a pupil "hold-harmless" provision which had no bearing on educational needs or property wealth; the base aid year was permanently held at the 1978-79 level, and the inequities resulting from thirty years of the district "hold-harmless" provision were being carried forward without compensating adjustments.

The funds remaining after allocation for base aid were distributed under "equalization aid." Under this section of the Act, half of the remaining funds were distributed under a formula directed at equalizing the disparity between the poor and wealthy districts. Of the total allocated under this program in 1979-80, this accounted for only 6.8 percent of MFP aid.

The other area of contention was the distribution of funds for vocational education. In order for a school district to institute a program of vocational education approved for state funding, it must first establish a program with local funds. The state would consider funding a portion of the program only if the program was already operational. Obviously, this requirement worked to the advantage of the wealthier school districts which could raise the funds and to the disadvantage of the poorer districts which lacked the resources for such programs.

Against this backdrop of funding was the undisputed evidence that there were sharp disparities among school districts in expenditures per pupil and education opportunities available as reflected by staff, class size, curriculum, remedial services, facilities, materials, and equipment. In dollar terms, the highest and lowest revenues per pupil in 1978-79 respectively were $2,378 and $873. Disregarding the extremes, the difference at the ninety-fifth and fifth percentiles was $1,576 and $937. It was also undisputed that there was a substantial variation in property wealth among districts. The distribution of property wealth, measured as equalized assessed valuation per pupil in average daily attendance (ADA) in 1978-79, ranged from $73,773 to $1,853. These wealth disparities were prevalent among both large and small district property wealth and the amount a school district could raise was directly related to its property wealth.

There were substantial numbers of children affected by the revenue disparities. In 1978-79, only 7 percent of the pupils resided in school districts with over $1,500 per pupil in state-local revenues, while over 21 percent resided in districts with less than $1,100 per pupil in state-local revenues, and 55 percent of the districts were below the state mean. This great disparity among the districts' property wealth and the state funding system did not equalize the educational revenues available to the school districts, but only widened the gap.

The appellants devoted little attention to the constitutional provisions in question, but contended that there was no requirement of uniformity of educational opportunities throughout the state, that the constitution only required that all children receive a "general, suitable and efficient" education. In rejecting this contention, the court stated:

> We can find no legitimate state purpose to support the system. It bears no rational relationship to the educational needs of the individual districts, rather it is determined primarily by the tax base of each district. The trial court found the educational opportunity of the children in this state should not be controlled by the fortuitous circumstance of residence, and we concur in that view. Such a system only promotes greater opportunities for the advantaged while diminishing the opportunities for the disadvantaged. . . We find. . .to alter the state financing system to provide greater equalization among districts does not in any way dictate that local control must be reduced. Second,. . . even without deciding whether the right to a public education is fundamental, we can find no constitutional basis for the present system, as it has no rational bearing on the educational needs of the districts.
>
> We come to this conclusion in part because we believe the right to equal educational opportunity is basic to our society. . . . Education becomes the essential prerequisite that allows our citizens to be able to appreciate, claim and effectively realize their established rights. The opening phrase to our constitutional mandate for a public school system underscores the truth of the principle. Intelligence and virtue being the safeguards of liberty and bulwark of a free and good government, the State shall ever maintain a general, suitable and efficient system of free public schools.[263]

In summary, the court found that the problems facing the Arkansas school finance system failed constitutional mandates due to two major problems within the system. The first was the disparity in property wealth among districts with such property wealth being the primary determinant of the amount of revenue a district received and, ultimately, the quality of education in that district. The second problem, the manner in which state funds were distributed, compounded the first problem. The end result was considered by the court to be a violation of the mandates of the Arkansas Constitution. The court also concluded that the ultimate responsibility for meeting the constitutionally mandated requirements was placed on the state and not on local school districts. As stated by the court:

> . . . Ultimately, the responsibility for maintaining a general, suitable and efficient school system falls upon the state. Whether the state acts directly or imposes the role upon the local government, the end product must be what the constitution commands. When a district falls short of the constitutional requirements whatever the reason for the violation, the obligation is the state's to rectify it. If local government fails, the state government must compel it to act, and if the local government cannot carry the burden, the state must itself meet its continuing obligation.[264]

CHAPTER VII

PUBLIC SCHOOL FINANCE CHALLENGES IN ILLINOIS

While the State of Illinois has not experienced the state school aid judicial challenges of many other states, several cases have originated in Illinois which directly relate to the constitutionality of the Illinois system of financing public schools. In addition, several cases provide supplementary information concerning the role and responsibilities of the state in both providing public education and its financing.

Education as a State Function

The constitutional, legislative, and judicial history of public education in Illinois clearly illustrates that the provision of public education, and the methods of financing public schooling, is a state function in Illinois. From a constitutional perspective, the first Illinois Constitution did not mention education.[265] Under the Constitution of 1818, the state was authorized to purchase land for schools and to sell or lease such land for school purposes as the state elected to do so.[266] The Constitution of 1848 added little to this limited role in public education except to provide that the Legislature could exempt school property from taxation and that public school districts, as quasi-municipal bodies, could levy taxes for educational purposes. The 1862 Constitution provided that the Legislature was responsible to "provide for a uniform thorough and efficient system of free schools throughout the state."[267] The Constitution of 1870 also provided a mandatory state role in public education by specifying that:

> The General Assembly shall provide a thorough and efficient system of free schools, whereby all children of this State may receive a good common school education.[268]

The 1870 Constitution--while specifying public school funds could not be used for sectarian purposes, that school property may be exempted from taxation, and establishing a maximum debt limitation for school districts--did not address the manner in which Illinois public schools were to be financed.[269] Finally, the present Constitution of the State of Illinois provides, in pertinent part, that:

> SECTION 1. GOAL--FREE SCHOOLS
>
> A fundamental goal of the People of the State is the educational development of all persons to the limits of their capacities.
>
> A State shall provide for an efficient system of high quality public educational institutions and services. Education in public schools through the secondary level shall be free. There may be such other free education as the General Assembly provides by law.
>
> The State has the primary responsibility for financing the system of public education.[270]

From a constitutional perspective, therefore, it is clear that the public school system of the State of Illinois is an "arm" of state government. The judicial decisions which follow also illustrate this principle and, more explicitly, indicate that the General Assembly is the branch of state government vested with the responsibility to provide for, and to determine the financing of, Illinois public education.

The legislative history of public schooling in Illinois also supports this principle. For example, as early as 1825 an enactment commonly called the "Illinois Free Schools Act" stated:

> Be it enacted by the people of the State of Illinois represented in the General Assembly, that there shall be established a common school or schools in each of the counties of the State, which shall be open and free. . . . .[271]

From this 1825 identification of the state's role--as the state is "represented in the General Assembly"--in providing public education to the current Illinois School Code, nothing has been found in the legislative or judicial history of the laws governing the providing and/or financing of Illinois public education which conflicts with the fundamental principle that this responsibility is clearly vested in the General Assembly of the State of Illinois.[272]

Judicial Challenges to the Financing of Illinois Public Schools

One of the earliest judicial actions in Illinois which relates to the General Assembly's responsibility to finance public schools is found in a Supreme Court decision concerning the organization of community consolidated school districts.[273] In the course of upholding the authority of the General Assembly to establish such districts, the court recognized that the statute, Chapter 98 of the Revised Statutes of 1845, provided the General Assembly with the authority to determine the ". . . distribution of the state school fund among the several school districts, and provided that the voters of the different school districts might authorize, by a majority vote, the levying of a tax for school purposes in their respective districts" [274] This court went on to state that:

> . . . the Constitution . . . is a command to the General Assembly to provide a thorough and efficient system of free schools, and the only limitation placed on the broad and far-reaching powers inherent in the state to provide a system of free schools is the requirement that the system shall be one whereby all the children of the state may receive a good common school education. The Constitution has not provided the mode by which the thorough and efficient system of free schools required to be provided shall be organized nor the officers by whom its affairs shall be administered and directed. It is left to the General Assembly to declare what shall constitute a common school education and what system of free schools will be thorough and efficient. The Legislature has the power to act directly and create school districts by general or special acts, or it may prescribe agencies by which the boundaries of school districts shall be determined. It is not for the courts to say that the Legislature has acted unwisely in selecting the agencies or methods which it deems best to carry out the mandate of the constitution, and the courts cannot interfere unless the Legislature, or the officers authorized by the Legislature to act in its stead, have, as a matter of fact, created a system of free schools which all reasonable men must agree is not an efficient and thorough system, as those terms are commonly and generally understood. The act under consideration does not provide for a system of free schools that is not thorough and efficient, nor

does it provide for a system that will deprive the children of the state of the opportunity to receive a good common school education. The act is not unconstitutional.[275]

In a 1929 case dealing with a taxpayer's challenge to the use of funds to build a high school, the Illinois Supreme Court added further support to the validity of the principle that the General Assembly has the responsibility to both provide for public education and a means of financing public schools.[276] In recognizing not only the responsibilities placed on the General Assembly, but also the wide latitude the court would recognize in carrying out these responsibilities, for public education, the court stated:

> Section 1 of Article 8 of the Constitution imposed on the Legislature the duty of providing a thorough and efficient system of free schools, whereby all the children of the state may receive a good common school education. This was a command addressed to the Legislature, and it has been construed as a limitation also on its power to provided for the maintenance by local taxation of free schools of a different character from that named in the section. It was not a grant of power, for the Legislature has the inherent power to enact all laws proper for the government or welfare of the people of the state not prohibited by the Constitution of the United States or of this state. The Legislature gets no greater power from the command. When we look for the limitations on that power we find these two, and these two only, which the courts can enforce: That the schools shall be free, and that they shall be open to all equally. The court has enforced these limitations when the occasion requiring the enforcement of them arose. . . . There are no others to which the judicial power extends.
>
> The command of the constitution is addressed to the General Assembly alone. It was not a self-executing provision, but required legislation to give it effect, and the responsibility and duty of providing the system and the means and agencies by which it should be made effective rest upon the General Assembly alone. It is no more within the authority of the court to pass judgment upon the thoroughness and efficiency of the system, or any part of it, than to determine whether the laws enacted for the protection of operative miners, . . . are such as are necessary for that purpose; whether the action of the Governor in removing an officer for incompetency, neglect of duty, or malfeasance in office, . . . is justified by the facts; whether, where a special law has been enacted, a general law could not be made applicable, . . . All these questions have been held to be matters for legislative determination, with which the courts have no right to interfere.[277]
>
> . . . The problems which arise in connection with the schools of the state are practical, and it is not always easy to see what is best. The wisdom of any action taken may be questionable. Even if the legislative intent might be thought crude or unwise and the law unjust or oppressive, errors of legislation are not subject to judicial review unless they exceed some limitation imposed by the Constitution. Within those limitations the legislative power is supreme, and judicial power cannot interfere with it.[278]

This 1929 decision, while not only illustrative of the Illinois Supreme Court's recognition of the plenary power over public education held by the General Assembly, is important for a second reason. This is the first case found by the authors which makes specific reference, at the Supreme Court level, to a "wealth disparity" between school districts. With respect to schools being "well graded," meaning that a uniformity in the course of study available in the common schools of the state was not equal throughout the state, the court recognized that "in the larger and more wealthy counties the free schools were well graded and the course of instruction of a high order, while in the thinly settled and poorer counties the old district system was still retained and the course of instruction prescribed was of a lower order."[279] So long as the General Assembly provided schools which were both free and open to all equally, which were the only constitutional mandates of 1870 and in effect at that time, the court reasoned that the Legislature was in compliance with the constitutional requirements, and the court held no power to interfere. This early "hint" of the court's position of "noninterference" was to be a common theme in later Illinois cases involving challenges to state aid systems.

This 1929 "hint" was stated in much more direct terms in a later case involving the organization of a school district and the right of the district's board members to hold office.[280] At the time of this case the Illinois Constitution of 1870 mandated the General Assembly to provide a "thorough and efficient system of free schools, whereby all children of this state may receive a good common school education. In considering the issues before the court in the case, the court first considered the respective roles of the Legislature and the courts by stating:

> We must first ascertain whether this court has the duty and the power to determine whether a specific school system is thorough and efficient. Where issues before this court involve the constitutionality of statutes permitting the creation of school districts, the court is necessarily limited in decision to a narrow field. This is true because of the inherent power of the legislature and section 1 of article VIII of the constitution. The section simply operates as a mandate to the legislature to exercise its inherent power to carry out a primary, obligatory concept of our system of government, i.e., the children of the State are entitled to a good common-school education, in public schools, and at public expense. Prior decisions of this court have held the section to also place upon the legislature two limitations when implementing that concept: the schools established, i.e., the system, must be free and must be open to all without discrimination. . . . This court has consistently held the section to impose the two limitations, and no more. . . .
>
> This court has also been consistent in holding that the question of the efficiency and thoroughness of the school system established by legislative permission is one solely for the legislature to answer and that the courts lack power to intrude. . . . errors of legislation are not subject to judicial review unless they exceed some limitation imposed by the constitution. Within those limitations the legislative power is supreme, and judicial power cannot interfere with it.[281]

One year after this decision the Illinois Supreme Court decided a case dealing with the statutorily prescribed manner of apportioning the common school funds when such funds were insufficient to pay in full the claims of all public school districts.[282] A minor point included in this case was related to the statutory conditions imposed on school districts to qualify for equalization funding and the lack of any qualifications for receiving general state aid grant

funding. The court concluded that some school districts who would not qualify for equalization funding, but would receive general grant funding, would receive less money than they received in state aid for the preceding year despite the fact that state aid to schools had been "substantially increased." The court also concluded that this situation was not at variance with the statutory language's "plain meaning" concerning equalization and grant funds distribution and that any arguments opposing this distribution system should be "appropriately addressed to the legislature" rather than the courts.[283]

The judicial view that--aside from meeting the 1870 constitutional mandate of a "thorough and efficient system of free schools"--the responsibility to provide and finance public schools lies with the legislature, and how this responsibility is carried out rests with the discretion and wisdom of the Legislature, has been repeated in numerous Illinois court decisions. For example, in a case involving a taxpayer's challenge to the construction of a new high school, the Illinois Supreme Court stated:

> Our State constitution (art, VIII, sec. 1) provides that the General Assembly shall provide a thorough and efficient system of free schools. A high school is as much a part of our free school system as are elementary or grade schools. . . . There is no constitutional limitation placed on the legislature with reference to the agencies the State shall adopt for providing for free schools. . . . Under the mandate of the constitution the duty rests upon the legislature to provide for an adequate school system. How this is to be done is a matter which rests in the discretion and wisdom of the legislature, subject to the constitutional requirements regarding uniformity and against discrimination.[284]

In another case challenging a school board's issuance of bonds, the court also stated:

> It must be constantly kept in mind that the constitution has imposed upon the General Assembly a duty to establish a thorough and efficient system of free schools, and this provision has been construed as permitting the legislature unrestricted authority with reference to the formation of school districts and the agencies which it shall adopt to provide the system of free schools required by the constitution. Thus, the statutes authorize several different types of organized school districts, each of which may provide special advantages for the particular territory in which it is organized. We have repeatedly held that the question of the efficiency and fairness of the school system, established by legislative action, is solely one for the legislature to answer.[285]

While additional cases could be cited, it is sufficient to note here that this judicial view is frequently evidenced in Illinois court decisions and appears to be an established principle regarding the duty of the Legislature for providing public education.

In 1968, the United States District Court for the Northern District of Illinois issued the first Illinois-based decision specifically addressing the issue of the constitutionality of various state statutes governing the financing of public schools.[286] This pre-Rodriguez case, McInnis, was brought by a number of elementary and high school students attending four school districts located in Cook County. They claimed that the various state statutes dealing with the financing of Illinois public schools were unconstitutional inasmuch as these statues violated their

Fourteenth Amendment rights to equal protection and due process because they permitted wide variation in the expenditures per pupil from district to district, thereby providing some students with a "good" education. The plaintiff students sought to correct this "inequitable situation" by having the school finance statutes declared unconstitutional and to permanently enjoin the defendant state officials charged with the administration of the statutes from distributing tax funds to public schools under these statutes.

The school financing system complained of in this case was one in which the General Assembly had delegated the authority to local school district school boards to raise funds by levying taxes on all property located within a district. School boards could also issue bonds for the construction and repair of school buildings under these statutes. The legislation also placed limits on the maximum indebtedness and maximum tax rates which school districts could impose for educational purposes. in 1966-67, the approximately 1,300 districts in Illinois had roughly $840 per pupil with which to educate their students, of which about 75 percent came from local sources, 20 percent was derived from state aid, and 5 percent was supplied by the federal government. Since the financial ability of the individual districts varied substantially, per pupil expenditures varied between $480 and $1,000. State statues which permitted such wide variations allegedly denied the less fortunate Illinois students of their constitutional rights.

Article VIII, Section 1 of the 1970 Illinois Constitution required the Legislature to "provide a thorough and efficient system of free schools, whereby all children of this state may receive a good common school education." Accordingly, a state common school fund supplemented each district's local property tax revenues, guaranteeing a foundation level of $400 per student. The common school fund had two main components: (1) a flat grant to districts for each pupil, and (2) an equalization grant awarded to each district which levied a minimum property tax rate. Over 97 percent of the districts qualified for the equalization grant. In 1966-67, the flat grant accounted for approximately one-third of the state aid or $47 per elementary pupil and $54.05 per high school pupil. The equalization grant was calculated on the assumption that the district only assessed the minimum rate. Total revenues from the state common school fund accounted for about 15 percent to 18 percent of all districts' income.

The local tax revenue per student which was necessarily generated by the minimum rate was added to the flat grant per pupil. If this sum was less than $400, the difference was the equalization grant. Therefore, every district levying the minimum rate was assured of at least $400 per child. On the other hand, if a locality desired to tax itself more heavily than the minimum rate, it was not penalized by having the additional revenue considered before determination of the equalization grant. Since the hypothetical calculation used the same tax rate for all localities, the assumed revenue per child depended upon the total assessed property value in a district and the number of students. Thus, the equalization grant tended to compensate for variations in property value per pupil from one district to another.

Finally, numerous special programs, both state and federal, supplied about 10 percent of the districts' revenues. This "categorical aid" was allocated for particular purposes such as bus transportation or assistance to handicapped and disadvantaged children. Plaintiffs did not challenge these programs, conceding that they were rationally related to the educational needs of the students.

The court recognized the unequal access to financial support among school districts by stating:

> Clearly, there are wide variations in the amount of money available for Illinois' school districts, both on a per pupil basis and in absolute terms. Presumably, students receiving a $1000 education are better educated that [sic] those acquiring a $600 schooling. While the inequalities of the existing arrangement are readily apparent, the crucial question is whether it is unconstitutional. Since nearly three-quarters of the revenue comes from local property taxes, substantially equal revenue distribution would require revamping this method of taxation, with the result that districts with greater property values per student would help support the poorer districts.
>
> While the state common school fund tends to compensate for the variations in school districts' assessed valuation per pupil, variation in actual expenditures remains approximately 3.0 to 1, 2.6 to 1, and 1.7 to 1 for elementary, high school and unit districts respectively. Though districts with lower property valuations usually levy higher tax rates, there is a limit to the amount of money which they can raise, especially since they are limited by maximum indebtedness and tax rates.[287]

With respect to the challenge under the Fourteenth Amendment, this court concluded that the statutes governing state aid to public schools in Illinois were neither arbitrary nor invidiously discriminatory and, therefore, they complied with the requirements of the Fourteenth Amendment. Much like the Illinois Supreme Court decisions presented above, the court concluded that the Illinois General Assembly was "presumed to have acted within their constitutional power despite the fact that, in practice, their laws resulted in some inequality."[288] As concluded by the court:

> In the instant case, the General Assembly's delegation of authority to school districts appears designed to allow individual localities to determine their own tax burden according to the importance which they place upon public schools. Moreover, local citizens must select which municipal services they value most highly. While some communities might place heavy emphasis on schools, others may cherish police protection or improved roads. The state legislature's decision to allow local choice and experimentation is reasonable, especially since the common school fund assures a minimum of $400 per student.
>
> Plaintiffs stress the inequality inherent in having school funds partially determined by a pupil's place of residence, but this is an inevitable consequence of decentralization. The students also object to having revenues related to property values, apparently without realizing that the equalization grant effectively tempers variations in assessed value by using a hypothetical calculation. Furthermore, the flat grants and state and federal categorical aid reduce the school's dependence on local taxes. While alternative methods of distributing school monies might be superior to existing legislation, . . . In each of the instances where particular statutory provisions have been criticized by plaintiffs we can find a legitimate legislative policy. Where differences do exist from district to district, they can be explained rationally. The charges made in the complaint fall short of

> demonstrating either an arbitrary exercise of legislative power or an invidious discrimination. Under these circumstances, there can be no denial of any Fourteenth Amendment rights.[289]

This conclusion, while not only serving as a forerunner of the Supreme Court's decision in Rodriguez, also was based on a second primary line of reasoning. Part of the plaintiff students' argument was based on the claim that, constitutionally, public school expenditures must be based on the pupils' "educational needs" without regard to the financial strength of the local school district which the student attends. The court found this argument to be "nonjusticiable." This conclusion was based on the view that there were no "discoverable and manageable standards" by which the court could determine when "educational needs" were satisfied or violated under the Fourteenth Amendment. In the court's view, the only possible standard that might be found would be a "rigid" assumption that each pupil must receive the same dollar expenditure. Recognizing that expenses alone could not be used as the "exclusive yardstick of a child's educational need," the court observed that deprived pupils need more aid than fortunate students. Moreover, one dollar spent on a pupil in a small school district may provide less education than one spent in a large district. For these and other reasons, the court concluded that a single, simplistic formula to determine "educational needs" would be impractical and that the Fourteenth Amendment was not a "pedagogical requirement of the impracticable."

In summarily denying the challenges brought by the students in this case, the court dismissed their arguments by stating:

> The present Illinois scheme for financing public education reflects a rational policy consistent with the mandate of the Illinois Constitution. Unequal educational expenditures per student, based upon the variable property values and tax rates of local school districts, do not amount to an invidious discrimination. Moreover, the statutes which permit these unequal expenditures on a district to district basis are neither arbitrary nor unreasonable.
>
> There is no Constitutional requirement that public school expenditures be made only on the basis of pupils' educational needs without regard to the financial strength of local school districts. Nor does the Constitution establish the rigid guideline of equal dollar expenditures for each student.
>
> Illinois' General Assembly has already recognized the need for additional educational funds to provide all students a good education. Furthermore, the legislative School Problems Commission assures a continuing and comprehensive study of the public schools' financial problems. If other changes are needed in the present system, they should be sought in the legislature and not in the courts.[290]

Three years after the McInnis decision, the State of Illinois joined other states in experiencing a Serrano I-type challenge to its state school finance system.[291] In this complaint, a student brought suit against Bakalis, the Superintendent of Public Instruction of the State of Illinois, and others claiming that the Illinois statutes governing the distribution of state aid to

public school districts was discriminatory and, therefore, violated the Fourteenth Amendment's equal protection guarantee. Basically, Rothschild claimed the Serrano I issue that a "significant factor in determining the quality of STUDENT'S education is the amount of money allocated under the challenged provisions to DISTRICT 113 as an equalization quota for expenditure on STUDENT'S education."[292] Much like the Fourteenth Amendment question in the Serrano I challenge, the claim in this case became moot due to the U.S. Supreme Court's opinion in Rodriguez in 1973.

As was also the approach in other states following Rodriguez, the challenges to the Illinois school finance system turned to the state's constitutional provisions for education and/or equal protection. The equal protection clause of the Illinois Constitution resemble the equal protection clause of the United States Constitution. Article I, Section 2 of the Illinois Constitution states:

> No person shall be deprived of life, liberty, or property without due process or be denied the equal protection of the laws.[293]

In an action based on the 1970 Constitution, taxpayers brought suit against the State Superintendent of Education and others claiming that the constitutional provision of the last sentence of Section 1 of Article X which reads "the State has the primary responsibility for financing the system of public education" indicated that the state was required to provide not less than 50 percent of the funds needed to operate and maintain public elementary and secondary schools and services.[294] The Illinois Supreme Court found that, although the sentence could be susceptible to the interpretation argued by the plaintiff taxpayers, an examination of the proceedings of the Constitutional Convention showed conclusively that the sentence ". . . was intended only to express a goal or objective, and not to state a specific command."[295] As identified by the court, the intent of the Education Committee of the Constitutional Convention was not to impose a legally enforceable duty on the part of the state through the General Assembly, but the intent was to state a commitment that the state should assume a greater responsibility for the financing of the public school system.[296] Since the sentence was intended to be a hortatorical commitment, or a goal that the state should seek to achieve, the court refused to recognize a constitutionally based specific obligation placed on the General Assembly to fund public schools at a 50 percent or more level. Two months later, the same court affirmed and restated this conclusion in a case originally brought by the Chicago Board of Education.[297] In deciding this case, the court stated that the last sentence of Section 1 of Article X of the 1970 Constitution did not "require the State to assume responsibility for a fixed percentage of the cost of the State's system of public education, . . . the provision in question stated a goal, and not a mathematical formula."[298]

In what may be considered the most direct attack on the constitutionality of the Illinois state aid to public schools system, with the factor of local district wealth being related to per pupil expenditures, farmers-landowners challenged the taxes levied upon their lands for the years 1971 and 1972.[299] The defendant farmers-landowners argued, in relevant part, that in their area, Franklin County, they raised only $462 in real estate taxes per student enrolled in the county's public schools, far below the state average of $627 in real estate taxes per enrolled student, even though the tax rate in Franklin County was $2.68 per $100 of equalized assessed valuation, slightly above the state average of $2.64 per $100 of equalized assessed valuation. A significant part of the argument presented to the court and based on this taxation and revenue

generation data was that the Illinois method of financing public schools, which depended to a large extent on the revenue that school districts could raise from local real estate taxes, "invidiously discriminates against school-aged children and their parents who live in poor school districts, in contravention of the equal protection clauses of the state and federal constitution."[300] Although the court rejected the equal protection clause of the federal constitution argument based on the U.S. Supreme Court's decision in Rodriguez, the court did consider the equal protection claim under the 1970 Illinois Constitution.

In setting the factual foundation for its decision, the court first recognized that Illinois public school districts drew most of their revenue from local real estate taxes during the time in question, the years 1971 and 1972. The differences in the equalized assessed valuations of real property located in the school districts was recognized as resulting in large disparities in school districts' abilities to raise revenue from real estate taxes. The data illustrated that in 1972 Franklin County had an equalized assessed valuation of only $3,610.68 per capita, as compared to an average in the state of $5,904.26 per capita. Upon this tax base Franklin county levied a real estate tax of $2.68 per $100 equalized assessed valuation which was above the state average of $2.64 per $100 equalized assessed valuation. Yet this tax raised only $462 per student enrolled in the county's public schools, $165 below the state average of $627 in real estate taxes per student enrolled in public schools.

To ameliorate the effect of such differences, the State of Illinois, in 1971 and 1972, distributed revenue from its common school fund to its various school districts. The formula for calculating the distribution to each school district was provided by Section 18-8 of the Illinois School Code.[301] This formula was known as a foundation program. Under this foundation program, a general apportionment was made to every public school district of $48 per pupil in average daily attendance. Property-poor school districts were, in addition to the $48, also paid an "equalization quota." Equalization quotas were calculated by multiplying a school district's equalized assessed valuation by a certain "qualifying" tax rate--.84 percent for elementary school (K-8) districts and high school (9-12) districts having a weighted average daily attendance of 100 or more, and 1.08 percent for unit school (K-12) districts. If the product of this multiplication for a district, plus the district's general apportionment from the state, totaled less than $520 per pupil in average daily attendance, the state was required to pay an equalization quota to that district which made up the difference between the actual total and the foundation level of $520, provided that the district levied a property tax rate at least equal to the applicable qualifying rate.

Despite this tendency of Illinois' foundation program to equalize the revenue available to school districts, the defendants asserted that they and their children were denied the equal protection of the laws by Illinois' method of financing public schools in 1971 and 1972 because the school districts in Franklin County had lower level of expenditure per pupil than that of other school districts.

This court, in rejecting the equal protection argument of the defendant farmers-landowners, fundamentally adopted the reasoning in Rodriguez in its decision. Recognizing that the Rodriguez decision found that education was not a fundamental right under the United States Constitution, and that the category of persons who resided in property-poor school districts in that case did not amount to a suspect classification, this court also adopted the Rodriguez standard of judicial review by stating:

> Although the United States Supreme Court purported to apply, in Rodriguez, the standard of review ordinarily used in equal protection cases, it actually fashioned another standard which is more restrictive than the ordinary standard, but less restrictive than the standard of strict judicial scrutiny. The court first said that the principle of local control of public schools was valid, and that it justified a state's reliance on local real estate taxes in financing public schools. The court indicated, however, that discrimination among school districts caused by reliance upon real estates taxes would be tolerated only if it were not invidious. The invidiousness of such discrimination is measured by two factors: the adequacy of the education provided by the school districts of the parties who attack a state's method of financing its public schools, and the size of the disparity in expenditures per pupil between the school districts of those parties and wealthy school districts in the state. This suggests that a state's method of financing public schools might deny children in especially poor school districts the equal protection of the laws, and yet might be constitutional with respect to children in other school districts.[302]

From this orientation the court found that the defendants, either by the evidence they introduced or the arguments they offered, did not show that the claimed discrimination against parents and school children residing in property-poor school districts was invidious discrimination. In rejecting their claim, the court concluded:

> At trial, the defendants did not elicit any testimony concerning the discriminatory aspects of Illinois' method of financing public schools during 1971 and 1972. Although the defendants introduced in evidence several exhibits which contained information relevant to this subject, they made little effort to separate the information from the large volume of other material in the exhibits. The defendants have not offered an analysis of what the statistics included in their exhibits prove. They have not introduced evidence concerning the adequacy of the education provided by school districts in Franklin County, and they have not introduced evidence concerning the size of the disparity in expenditures per pupil between school districts in Franklin County and wealthy school districts in the state.
>
> Because of this failure of proof by the defendants, Illinois' method of financing public schools during 1971 and 1972 cannot be found to have denied the equal protection of the laws to the defendants.
>
> All the defendants' arguments, therefore, are rejected.[303]

This case, therefore, is the nearest Illinois case to incorporate many of the Serrano I-type arguments and the arguments that were presented in many of the post-Serrano I cases in state courts. Although it failed in its challenge to the state system of financing public schools, as that system was operational in the 1971 and 1972 years, this failure to successfully challenge the school finance system on equal protection grounds under the present Illinois Constitution may be viewed more as a failure to provide sufficient testimony and/or evidence to support the challenge than a definitive answer to the equal protection-school fiance system question.

Two additional Illinois decisions also bear mention. In 1976, in a case involving the reduction of state aid to a school district as a penalty for failing to hold the statutorily required 176 days of pupil attendance, the Illinois Supreme Court again concluded that the state has the

primary responsibility for financing the system of public schools but it is not constitutionally required to bear a given percentage or a majority of such costs.[304] In a second case involving state funding of mandated special education programs, an Illinois Appellate Court held that the manner of financing Illinois public education was a legislative matter and not one to be determined by the judicial system.[305] (Note: It should be noted that the above cases did not involve the resource equalization formula enacted as P.A. 78-1114, amending I11.Rev.Stat., c. 122, sec. 18-8 on July 2, 1974.)

The last known attempts to challenge the system of school finance in Illinois incorporating, at least in part, claims based on the 1970 Illinois Constitution occurred in 1979 when two separate cases were filed in circuit courts.[306] Each of these cases incorporated the equal protection and education articles of the Illinois Constitution in challenging the differential in tax rates between unit districts, high school districts, and elementary districts. While these cases are primarily "tax rate" oriented, each also contains elements, such as education, as a fundamental right under Article X, Section 1, of the Illinois State Constitution; allegations of discrimination against pupils in unit school districts that do not levy local taxes at the rate required by statute in order to qualify for full state aid; and the claim that, inasmuch as the state is required to provide equal educational opportunities to all students, this responsibility is not being met due to the current state aid system's making educational opportunities dependent to a great extent on local property wealth and tax rates. Neither of these cases has been brought to an appellate court to date.

CHAPTER VIII

IMPLICATIONS FOR ILLINOIS

While the authors are not clairvoyant with regard to predicting the outcome of a direct judicial challenge to the present Illinois public school finance system, the application of prior judicial decisions rendered in other states does permit several general observations. As was true in prior state cases (with the exception of the Montana tax system challenge), the applicable issue in state school finance system cases--since Maine's Sawyer v. Gilmore decision in 1912 to the present--is the challenge to a child's education being dependent (with dependency usually stated in terms of expenditures) upon the taxable wealth of the child's school district of residence. The early cases, or those predating Serrano I, illustrate several features which were to become "routine" in the 1970s and 1980s cases. Among these features were the arguments claiming educational inequality due to the heavy reliance on local district wealth; the incorporation of both the education and equal protection articles of a state's constitution in legal challenges; that a state must show, at the very least, that a reasonable state purpose is supported by a school finance system that results in large differences in expenditures per pupil due to local district wealth; that some courts will determine that the legislature is the proper body to change school finance systems rather than through judicial actions; and last, but by no means least, that education is a state rather than a local function of government.

The modern era of judicial action directed toward challenging state school finance systems was originally launched when, in Serrano I, the California Supreme Court held that the quality of a child's education could not be a function of the wealth of his or her parents and neighbors. This decision denied the constitutionality of making the level of school expenditures in a school district a function of the wealth of the district in which the child resides. The Serrano I decision was soon followed by Rodriguez with the United States Supreme Court's decision that education was not a "fundamental right" under the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution. The Rodriguez decision effectively closed the door to federal courts for further litigation of this issue and forced subsequent litigation to be taken to state courts. Since Rodriguez, eleven state's appeals courts have upheld school finance systems and nine states have overturned such systems including two, California and Connecticut, which were eventually upheld after changes in the original systems had been enacted.

In practically all twenty state cases, both the equal protection and educational articles of a state's constitution were involved in the challenge. A review of the eleven upheld and nine overturned cases shows that the exact wording of each state's education article was not a significant factor. For example, Tables 1 and 2 indicate that the constitutional mandate of a "uniform" "thorough" and/or "efficient" system of public schools was mandated in six cases which were upheld (Idaho, Oregon, Pennsylvania, Ohio, Colorado and Maryland) and six cases which were overturned (New Jersey, Wisconsin, Washington, West Virginia, Wyoming and Arkansas).* Therefore, it is not critical to the outcome of school finance cases in other states

*See Tables 1 and 2 in the Appendix for listings of the cases

that the state constitution does or does not mandate education under such terms as does the Illinois Constitution in Article X, Section 1, by incorporating the term "efficient." What does separate the cases is the test of equal protection applied by each state court. Tables 1 and 2 clearly illustrate that every state court which upheld a school finance system applied a "minimal standard" or a "rational state interest" level of judicial analysis and each state finance system which was overturned applied the more stringent test of "strict scrutiny" or "compelling state interest" standard except in the Arkansas case. What is clearly indicated for those who would attempt to judicially overturn the Illinois public school finance system is that the exact language in Article X of the Illinois Constitution is not as critical to the probable outcome of an Illinois challenge as would be the success in arguing that the strict scrutiny test under the equal protection clause of the Illinois Constitution should be applied by Illinois courts rather than a minimal standard.

An additional consideration could become as important in Illinois as it was in Washington. This consideration involves the examination of the intent behind the education article in a state's constitution. If it could be shown, for example, that the intention of the framers of Article X of the 1970 Illinois Constitution was to clearly not base the quality or expenditures for a child's education on local school district wealth, a strong case could be made that the current Illinois school finance system does not meet the constitutional intent. An analysis of the records of the Sixth Illinois Constitutional Convention's Education Committee does not show support for such an argument. For example, an attempt to structure the education article according to the following language was defeated by the Education Committee. "The General Assembly shall provide a thorough and efficient system of free schools, whereby equal educational shall be afforded to all children of this State."[307]

An additional attempt to promote the following language also failed.

> Every child in Illinois has the right to receive a public education commensurate with his needs and abilities. It is the duty of the State to provide a system of free elementary and secondary schools which will assure equal educational opportunity to every child in the State.[308]

Inasmuch as two attempts to constitutionally mandate "equal educational opportunity" failed to garner majority support, it may be inferred that guaranteeing an "equal educational opportunity" was not the intent behind Article X of the present Illinois Constitution.

In addition, this Education Committee was aware of local district wealth inequities. This awareness may be demonstrated by the following excerpt which was associated with a defeated proposal aimed at requiring the State to provide "substantially all funds for the operational costs" of public schools.

> A salient fact of Illinois school finance is the enormous inequity among the districts with respect to their resources from local tax receipts. Some districts have comparatively large assessed valuations relative to the number of pupils to be educated; others have many pupils with relatively little taxable property to support the schools.

> Thus the quality of education received by any student in the State is largely a product of the accident of the wealth of his district. In poorer districts, the citizens must impose a greater tax burden upon themselves in order to achieve the same level of spending as wealthier districts.[309]

Finally, it can be argued that this Education Committee did not intend to mandate any specific form of school finance system or, in a more general sense, the characteristics which such a system should demonstrate, but intended that the General Assembly should decide such issues. Paul E. Mathias, Chairman of the Education Committee, in the final report to the total Constitutional Convention, in referring to the language which was eventually adopted as Article X which directs the State to provide for an "efficient" system of "high quality public education institutions and services," stated: "The Article emphasizes the importance of education in our democratic society. Implementation, of course, is left to the General Assembly."[310] Given the above, it would be difficult to argue in a judicial action that Article X of the Illinois Constitution prohibits the reliance on local school district taxable wealth because it was intended to constitutionally mandate equal education opportunity for each child in Illinois public schools or because it intended to eliminate the dependency on local district wealth as a constitutional mandate to the General Assembly. It would appear that the language of the education article of the Illinois Constitution may be too general and vague to challenge in school finance cases. The legislature is not mandated to provide a "thorough and efficient" system as was found in New Jersey and West Virginia. Illinois' education clause does not place qualitative demands or affirmative duty responsibilities upon the Legislature.

The Illinois clause does require "a system of free public school," as did the New York education clause. The court in New York concluded this provision was satisfied and its system of school finance was constitutional, although there were inequities in the system. It has been the general opinion in most state cases that anything beyond a minimum education was rightfully contingent on the willingness of voters in the local school districts to tax themselves. This argument would probably prevail in Illinois, making this avenue of legal challenge the most likely to withstand judicial scrutiny.

It should also be recognized that many of the characteristics found in the Illinois system of financing public schools were in evidence in other states and that no pattern of a system's being upheld or overturned evolved based on specific characteristics. For example, several states employed an equalization aid program and also utilized a guaranteed foundation funding program. Several states attempted to compensate for the variance in local district wealth by establishing a guaranteed assessed valuation program, a guaranteed tax base program, or some means of compensating for a local district's ability to support education. These characteristics were not found to be significantly related to a state's system being upheld or overturned. Also like Illinois, many of these state cases illustrate programs for special compensatory funding by differing grade levels and for special education, compensatory education, bilingual education, transportation and for declining enrollment periods. Again, the existence or absence of such compensatory funding programs bears no relationship to a state's system being upheld or overturned.

With respect to the equal protection claims in the twenty state cases considered herein, the outcomes are also mixed. Article I, Section 2, of the Illinois Constitution provides:

> No person shall be deprived of life, liberty or property without due process nor be denied the equal protection of the law.

This clause is quite similar to the equal protection clauses of the state constitutions previously cited. An analysis of the equal protection clauses deals with the level of scrutiny applied and the issue of education being a fundamental right. Under the Rodriguez test, education would be a fundamental right under most state constitutions because it is explicitly mentioned in a state constitution or because the legislature has a mandatory duty to provide education as a fundamental right. The upheld system challenged in Arizona, Colorado, Georgia, Idaho, Maryland, Michigan, New York, Ohio, Oregon and Pennsylvania are examples of states where the courts refused to identify education as a fundamental right. Therefore, the strict scrutiny level of the equal protection clauses was not used. The courts in cases in California, Connecticut, Kansas, Washington and West Virginia found education to be a fundamental right. These courts failed, however, to give consistent reasoning for their conclusions. The use of this ground for litigation in Illinois would not appear to be a standard which would withstand judicial scrutiny because the Illinois Constitution does not state "education is fundamental" nor does it state that "the legislature has a mandatory duty" to do anything relative to education beyond being "free."

Using the ground that property taxes created a suspect classification based on the property wealth of school districts or of the children in school districts was effective in California, West Virginia and Wyoming. This may be a viable ground to be used in Illinois. If it could be demonstrated that "low income" children live in "property-poor" school districts by using local tax figures of the property-poor school districts, these data would be valuable in a school finance challenge in Illinois provided the court applied the strict scrutiny analysis under equal protection claims.

The compelling state interest ground was used by several courts to justify or to uphold the state funding systems. Local control was seen as a compelling state interest in varying degrees in every upheld case except in Arizona. This could possibly happen in Illinois if the plaintiff challenged the Illinois system on the ground of a compelling state interest using strict scrutiny.

One available avenue under the equal protection clause of the Illinois Constitution would appear to be "suspect classification" if the Illinois system of school finance were to be challenged. The system could be found unconstitutional because of suspect classification or discrimination if it could be shown, for example, that poor children were located only in low property wealth districts and in no other districts.

Illinois courts could use the rational and reasonable scrutiny analysis of the equal protection clause of the Illinois Constitution to find the state funding system constitutional if the compelling state interest ground was used to challenge the Illinois system. The argument could be used that by preserving local contributions the notion of increased state control would be diminished. The undesirable outcome of increased state control over local policies could be emphasized in this argument, making the state's case stronger if the compelling state interest ground were used. It should be recognized, however, that most state courts rejected the suspect class argument. Generally, state courts held that a "suspect" class must be readily identifiable and subjected to purposeful unequal treatment. The plaintiffs in many of these cases failed to demonstrate that "low income" children live in "property-poor" school districts. Two state courts, California and Wyoming, did, however, hold that property-poor school districts constituted a suspect class.

In considering prior litigation originating in Illinois concerning the state's system of public school finance, it is safe to conclude from over 100 years of constitutional and legislative history that public education and the method of financing public schools are state functions vested in the General Assembly. In recognizing this principle, Illinois Supreme Court decisions rendered since 1929 have consistently found that, even when wealth disparities between school districts based on taxable district wealth were recognized by the court, the "correction" of the school finance system is a legislative rather than a judicial matter and, so long as the mandates of the Illinois Constitution were met, the judiciary would not "intrude" into legislative functions. This court has specifically stated that, under the terms of the 1870 Constitution, the Legislature is to be the sole judge of whether or not the Illinois public school system was "thorough and efficient." As recently as 1976, an Illinois Appellate Court, in hearing a claim of "invidious discrimination" due to per pupil expenditures being heavily reliant on the taxable wealth of a pupil's school district, concluded that no denial of equal protection was evidenced and that the state's system of financing public schools under the 1970 Constitution was in support of the "reasonable" state purpose of promoting local control.

It has been suggested that a possible approach to judicially challenging the current public school finance system in Illinois would be to argue that the system is inadequate when evaluated against the equity criteria of permissible variance and simple or conditional wealth neutrality.[311] Some encouragement has recently developed for this possibility in the California Serrano III decision. Since the demonstration of either criteria is typically dependent upon selected statistical methodologies, and since Serrano III illustrates that, at least in California, courts may accept a wide range of statistical methodologies commonly employed in school finance research, the development of statistical evidence related to these criteria would work to support such a challenge. The probability of success of a challenge based on such criteria, such as are found in Volume Two of this study, should be considered against the prior Illinois judicial decisions concerning the role of the judiciary in this matter and the interest of the Legislature in promoting local control.

An additional possibility has been generated by the enactment of "educational reform" legislation in Illinois in 1985. Under this legislation, Section 27-1 of the Illinois School Code was amended to include the following:

> Areas. Branches of education taught - discrimination on account of sex. The State of Illinois, having the responsibility of defining requirements for elementary and secondary education, establishes that the primary purpose of schooling is the transmission of knowledge and culture through which children learn in areas necessary to their continuing development. Such areas include the language arts, mathematics, the biological, physical and social sciences, the fine arts and physical development and health.
>
> Each school district shall give priority in the allocation of resources, including funds, time allocation, personnel, and facilities, to fulfilling the primary purpose of schooling.
>
> The State Board of Education shall establish goals consistent with the above purposes and define the knowledge and skills which the State expects students to master as a consequence of their education.

> Each school district shall establish learning objectives consistent with the primary purpose of schooling, shall develop appropriate testing and assessment systems for determining the degree to which students are achieving the objectives and shall develop reporting systems to appraise the community and State of the assessment results.
>
> Each school district shall submit its objectives and assessment and reporting systems to the State Board of Education, which shall promulgate rules and regulations for the approval of the objectives and systems. . . .[312]

It could be argued that, since this statute mandates the branches of education which must be taught in Illinois public schools, that each school district shall give priority in the allocation of funds to fulfilling this primary purpose of schooling, and since each school district must establish goals consistent with this purpose and define the knowledge and skills which the State expects students to master as a consequence of the education, school districts, due to inadequate expenditure on educational programs and/or services related to inadequate local district wealth, who fail to meet this statutory mandate and are unable to comply with this statutory mandate would be providing "inadequate educational opportunities." This approach, while presenting many measurement and correlational/causational difficulties, would be similar to the Kansas decision that property-poor school districts could not provide "fundamental education" on a rationally equal basis with property-wealthy districts and the Washington decision that the state system must provide sufficient funds to provide a "basic education" for all pupils. The outcome of such an approach in an Illinois court action, even assuming that the data to support such a claim could be collected, is not predictable in light of prior Illinois decisions and the fact that "basic education" based claims similar to those successfully used in the Kansas and Washington equal protection decisions were unsuccessful in Idaho, New York and Oregon. To be successful in Illinois, a challenge based on the above would likely need to prove by the evidence that large expenditures per pupil do result in this legislative mandate being met; that children who fail to meet this mandate fail because they reside in property-poor school districts that are not able to expend sufficient funds to provide the educational programs and/or services which would be necessary for all such students to meet the mandate; that the State and particularly the Legislature has the constitutional responsibility to provide adequate fiscal support to permit the students in property-poor school districts to meet the mandate; and that, while the defect in meeting the mandate may lie with the legislative rather than the judicial branch, the judicial branch must order a remedy.

Closely related to the "lack of opportunity for a basic education" is the state's "minimum adequacy" defense. Almost a bed rock defense strategy since Rodriguez is the argument that, while great inequalities in expenditures and service levels will exist in the state in question, no child in that state is truly allowed to receive less than a "minimally adequate" education. Later in this series of studies and in Volume Two of this particular study we will expand upon conceptual and measurement problems concerned with "adequacy." We wish to comment here only upon the legal implications of the adequacy defense.

First the wording of an education article, as has been shown, does not seem to affect the outcome of the cases under review. However, the presence or absence of words like "basic," "good," "uniform," "adequate," does provide a peg on which both plaintiff and defense can hang their respective hats. In this regard, in Illinois we seemed to have dropped in language specificity. We have gone from "uniform, thorough, and efficient" in 1862, to "thorough and efficient" in 1870, to only "efficient" in 1970. As an historical note, it is tempting to speculate

what would have happened had the Illinois constitution of 1970 been adopted one year after Serrano, rather than one year prior to Serrano. Perhaps this decline in language specificity would not then have occurred. It is also well to keep this bit of history in mind should another constitutional convention take place in Illinois.

But lawyers and, indeed, educators must work with the constitutional wording that we have now, and that is a requirement that the State of Illinois provide an "efficient system of high quality education." Therefore, plaintiffs, anticipating the "standard defense" of the state, would wish to show that the class of children represented in court did not receive a "high quality education," and, in fact, that these clients did not receive even a "minimally adequate" education in Illinois. Analysis of the Serrano testimony suggests that statistical analysis of financial data, while probably necessary in such litigation, is not sufficient to carry the day. A much more effective plaintiff tactic is to call local superintendents to the stand--rich school followed by poor school, in alternating fashion--for at least several hours of testimony. The purpose, of course, is to drive home to the judge that rich schools in Illinois have educational services that are not available to children in poor schools in Illinois, and that, indeed, these educational services can never become available to children in poor districts without tax rates being at appropriate levels. An even better showing can be made if local tax rate ceiling legislation prevents these districts from ever making this effort, assuming they are willing to adopt extraordinarily high and oppressive local tax rates. If the later showing can be made, then a case can be mounted that Illinois has a financial system that effectively prevents very poor districts from ever attaining the "efficient system of high quality education" to which they have a right in the constitution.

It must be admitted that the above legal tactic does place the superintendents from the poorer districts in a very uncomfortable posture. Such superintendents must, in effect, testify that the fiscal system does not allow or admit of a "minimally adequate" education in the district for which they have responsibility. Such brave souls must face the morning after headline: "Local superintendent testifies that his school is not adequate." The record of constitutional challenges will, however, show that this tactic is a winning one, and that plaintiff must be prepared to operate at this "nitty gritty" level in order to obtain a successful court judgment. It may well have been this type of detailed testimony on inadequate curriculum, inadequate institutional hardware and software, inadequate support staff, etc. etc. that was missing in Jones v. Adams, discussed in Chapter VII.

In reviewing plaintiff strategy and tactics, it would appear that the best showing that plaintiff can make is to demonstrate that the Illinois fiscal system results, or even requires, a level of services that is inadequate for most students in the state. Such an argument challenges the sufficiency of the entire system. Failing this argument, the next best strategy for plaintiff is to show that, while the Illinois system might be adequate for most students, it is not adequate for some students, and specifically, is inadequate for the class of students represented in the litigation.

In more simple terms, we think that to be successful in Illinois, plaintiff must clearly demonstrate that some target population of students has clearly fallen through the "minimally adequate" safety net provided by the K-12 fiscal structure of Illinois. The more identifiable and visible this target population of students is, the better. The court must know who is damaged before it can begin to think of how to remedy the situation. Also, by focusing the discussion on a specific damaged population, it is possible for the court to think in terms of several kinds of remedies. For example, the court might want to direct the legislature toward special purpose or categorical grants as a way of remedy rather than through the general aid formula. That kind of

specific focus would not be possible if the entire litigation had taken place only in the context of the general grant-in-aid formula. In general, the greater the showing of injustice, the better. The more specific the damaged population, the better. The more possibilities of remedy, the better.

In summary, it may be concluded that the results of school finance litigation in twenty states has not yielded consistent results or even clear trends with the possible exception of the application of the strict scrutiny standard of equal protection analysis in eight of nine cases overturning a state's school finance system, and a minimal standard of analysis in eleven cases, excluding the Montana taxation system-based challenge, upholding such systems. It may be generally concluded, however, that in order to find a state system of public school finance unconstitutional the following criteria must be met:

1. Education must be concluded by the courts to be a fundamental interest or fundamental right guaranteed by the state constitution.

2. The education article must require qualitative demands and affirmative duty by the legislature.

3. The strict scrutiny level of constitutional analysis must be used by the court and/or a suspect classification must be found under a state's equal protection of law guarantees.

4. The general level of funding in the state must be found to be inadequate or, at least, the level of funding of the plaintiff districts must be found to be inadequate.

Based upon the analysis of the twenty state cases contained herein, a challenge to the present state system of financing Illinois public schools not based on the above criteria, would likely fail in Illinois courts. Based upon the analysis of prior cases dealing with the system of financing public schools in Illinois, it may also be reasonably concluded that to successfully mount such an attack today would be difficult at best.

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APPENDIX

Table 1

STATE SCHOOL FINANCE SYSTEMS UPHELD IN JUDICIAL ACTIONS

State	Original Case Name	State Education Clause	Equal Protection Test
Arizona	Shofstall v. Hollins (1973)	"The legislature shall provide for a system of common schools by which a free school shall be established and maintained in every school district for at least six months in each year. . ."	Minimal standard
Michigan	Milliken v. Green (1973)	"The legislature shall maintain and support a system of free public elementary and secondary schools as defined by law. . ."	Minimal standard
Idaho	Thompson v. Engleking (1975)	"It shall be the duty of the legislature of Idaho to establish and maintain a general, uniform, and thorough* system of public free common schools."	Minimal standard
Oregon	Olsen v. Oregon (1979)	"The Legislature Assembly shall provide by law for the establishment of a uniform and general system of common schools."	Minimal standard
Pennsylvania	Danson v. Casey (1979)	"The General Assembly shall provide for the maintenance of a thorough and efficient system of pubic education to serve the needs of the Commonwealth."	Minimal standard
Ohio	Board of Education v. Walter (1979)	"The General Assembly shall make such provisions, by taxation, or otherwise, as, with the income arising from the school trust fund, will secure a thorough and efficient system of common schools throughout the state. . . "	Minimal standard
Georgia	Thomas v. McDaniels (1981)	"The provision of an adequate education for the citizens shall be a primary obligation of the State of Georgia, the expense of which shall be provided by taxation."	Minimal standard
Colorado	Lujan v. State Board of Education (1982)	"The General Assembly shall as soon as practicable, provide for the establishment and maintenance of a thorough and uniform system of free public schools throughout the state . . ."	Minimal standard
New York	Board of Education v. Nyquist (1982)	"The legislature shall provide for the maintenance and support of a system of free common schools wherein all the children of the state may be educated."	Minimal standard
Maryland	Hornbeck v. Somerset County Board of Education (1983)	"The General Assembly, at its First Session after the adoption of this Constitution, shall by Law establish throughout the State a thorough and efficient system of Free Public Schools; and shall provide by taxation, or otherwise, for their maintenance."	Minimal standard

*Emphasis added

Table 2

STATE SCHOOL FINANCE SYSTEMS OVERTURNED IN JUDICIAL ACTIONS

State	Original Case Name	State Education Clause	Equal Protection Test
New Jersey	Robinson v. Cahill (1973)	"The legislature shall provide for the maintenance and support of a thorough* and efficient system of free public schools. . . "	Strict scrutiny
Kansas	Knowles v. State Board of Education (1976)	"The legislature shall provide for intellectual, educational, vocational, and scientific improvement by establishing and maintaining public schools. . ."	Strict scrutiny
Wisconsin	Buse v. Smith (1976)	"The legislature shall provide by law for the establishment of district schools, which shall be as nearly uniform as practicable; and such schools shall be free and without charge for tuition to all children between the ages of four and twenty years. . ."	Strict scrutiny
California	Serrano v. Priest (1976)	"The legislature shall provide for a system of common schools by which a free school shall be kept up and supported in each district at least six months in every year. . ."	Strict scrutiny
Connecticut	Horton v. Meskill (1977)	"There shall always be free public elementary and secondary schools in the state."	Strict scrutiny
Washington	Seattle School District No. 1 of King County v. State (1978)	"The legislature shall provide for a general and uniform system of public schools."	Strict scrutiny
West Virginia	Pauley v. Kelly (1979)	"The legislature shall provide by general law, for a thorough and efficient system of free schools."	Strict scrutiny
Wyoming	Washakie County School District No. 1 v. Herschler (1980)	"The legislature shall provide for the establishment and maintenance of a complete and uniform system of public instruction, embracing free elementary schools of every needed kindergarten and grade. . . "	Strict scrutiny
Arkansas	Dupree v. Alma School District No. 30 (1983)	"Intelligence and virtue being the safeguards of liberty and the bulwark of a free and good government, the State shall ever maintain a general, suitable and efficient system of free schools and shall adopt all suitable means to secure to the people the advantages and opportunities of education. The specific intention of this amendment is to authorize that in addition to existing constitutional or statutory provisions the General Assembly and/or public school districts may spend public funds for the education of persons over twenty-one (21) years of age and under six (6) years of age, as may be provided by law and no other interpretation shall be given to it."	Rational relationship

*Emphasis added